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THESIS

Y339

A STUDY OF THE U.S. FOREIGN MILITARY SALES
AND ROC PROCUREMENT SYSTEM

by

Yeh, An-Sheng

September 1988

Thesis Advisor: Fenn C. Horton

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The ending of diplomatic relationships with the U.S. Government in 1979, resulted in a very ambiguous political environment between the Republic of China and the United States and severely affected the ROC's procurement system. It is clear that to find a more efficient means of acquisition of arms has become a critical lesson in the ROC currently.

This thesis concerns the concepts, methods and procedures of the United States Foreign Military Sales. It also evaluates the ROC's current procurement system. It concludes that a good understanding of the process of the U.S. foreign military sales program will improve the effectiveness and efficiency in the ROC's procurement of arms.

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A Study of the U.S. Foreign Military Sales and the ROC Procurement System

by

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Lieutenant Colonel, Republic of China Army
B.S., Chinese Military Academy, 1976

Submitted in partial fulfillment of the requirements
for the degree of

MASTER OF SCIENCE IN MANAGEMENT

from the

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ABSTRACT

The ending of diplomatic relationship with United States Government in 1979, resulted in a very ambiguous political environment between ROC and U.S. and severely affected ROC's procurement system. It is clear that to find a more efficient means of acquisition of arms has become a critical lesson in the Republic of China currently.

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Everything for my God, Jesus Christ.

I. INTRODUCTION

A. PURPOSE OF THE THESIS

On December 15, 1978, President Jimmy Carter announced the normalization of relations with the People's Republic of China (PRC) and the "derecognition" of the Republic of China on Taiwan (ROC). During the decade of negotiations between Taiwan and Washington, United States arms transfer policies seems always clouded by prudent concern for the climate of international diplomacy and favored PRC.

During those years the ROC suffered what is perhaps the highest turndown rate on Foreign Military Sales (FMS) requests to the United States of any foreign government attempting to put together a defense capability that would be credible against a clear and present danger.

Yet the United States remains the supplier of choice for the ROC military command for a variety reasons. Most of the ROC military has been trained with American equipment. American military equipment, furthermore, is among the best in the world. ROC representatives have long contact with American suppliers, and in a world in which the ROC no longer enjoys diplomatic recognition among the major suppliers, it is difficult for her to establish and secure access to alternative arms procurement markets.

Given such a critical environment, it is worthwhile to set forth and examine the issues which affect ROC's acquisition system. The purpose of this thesis is to describe and analyze the current processes and policies of the United States FMS and of the ROC's procurement system and objected to give a better understand of

the function of the United States FMS by the officer of ROC who works in this field which hope led to increase the effectiveness and efficiency of ROC's acquisition of arms.

B. PROBLEM STATEMENT

Given ROC's inability to procure arms elsewhere, and its limited ability to produce its own military equipment, the future security of the ROC will depend largely on the willingness of the American government to allow arms sales adequate to the defense of ROC.

No one is in a position to predict the outcome of American's China policy, but it is always necessary for the ROC to find a more efficient method of acquisition.

C. SCOPE AND LIMITATION

Based on ROC's special diplomatic environment, political considerations should be recognized as being important and sometimes crucial factors with respect to the initiation, negotiation, and consummation of Foreign Military Sales. Because of its complexity and diversity, political considerations were not subjected to discuss within the scope of this research.

The primary study will refer to the acquisition process of the United States Foreign Military Sales. Other areas, such as Commercial Sales, Technology Transfer, etc. are important, but need to be addressed in further research.

D. SOURCES

Source documents can be divided into several categories

1. Journals, Periodicals and newpapers.
2. Books, Theses and reports.
3. United States Department of Defense manuals and directions.
4. Repulic of China Ministry of Defense manuals and directions.

5. Congressional hearing, reports and policy statement.
6. Defense Technical Information Center Technical report.

E. RESEARCH QUESTION

The principal research questions are as follows:

1. What is the United States Foreign Military Sales Program ?
2. What is its current policy ?
3. How is this Program implemented ?
4. What is the Procurement system in the Republic of China ?
5. What are the problems of FMS for the ROC ?
6. What contigency can be made by ROC ?

II. A HISTORICAL REVIEW OF THE FMS IN THE U.S.

A. GENERAL

The United States Security Assistance Program is an important instrument for pursuing peace and world order. It has been a cornerstone of postwar U.S. foreign policy, and an integral part of its overall national security effort. In order to maintain a stable world order, it is essential that threatened allied or friendly countries are able to defend themselves.

The U.S. can not provide all the military equipment and service the might be needed to ensure the security of friendly nations. The transfer of U.S. defense articles and services is only one element in the development of these nations' defense capabilities. Most countries recognize that they must rely to the greatest extent possible on domestic resources to safeguard their sovereignty, territory, population, and wealth, and most devote significant resources to this effort. Nevertheless, U.S. security assistance is a vital and necessary element in helping friendly nations provide for their own defense.

Security assistance also plays an important role in the global defense posture of the United States. It often permits its friends and allies to accept defense responsibilities that she might otherwise have to assume at a much greater cost in money and people. In addition, security assistance contributes to the full spectrum of cooperative defense relationships that they have established with many nations. Recognizing security assistance as tangible evidence of the U.S. commitment to shared defense goals; recipient countries may be more readily disposed to provide

facilities for U.S. forces, or for access by U.S. forces when threats to mutual interests arise.

Within the overall framework of security assistance, succeeding Administrations, working together with the Congress, have developed various program designs which allow the U.S. to tailor bilateral and multilateral cooperation to specific needs and circumstances. The basic funded components of security assistance are the Foreign Military Sales Financing Program, the Military Assistance Program, the Economic Support Fund, the International Military Education and Training Program, and Peacekeeping Operations. Foreign Military Cash Sales and Commercial Exports are also reviewed as they contribute to security assistance.

An illustration of how security assistance is consistent with U.S. interests may be obtained by examining the application of one of the major programs: Foreign Military Sales (FMS).

Why FMS ? The best perceived reasons of the United States FMS, as listed in the Department of Defense Security Assistance Management Manual (DOD 5105 . 38 - M), are

> Foreign Military Sales (FMS) support specific U.S. foreign policy and security objectives. Historically, sales have improved international order and increased the prospects for regional stability, thereby reducing the likelihood of direct U.S. military involvement. Standardization of materiel, doctrine, and training is enhanced among our allies and friends. Additional benefits stemming from foreign military sales are the U.S. production base is maintained, U.S. employment is increased, research and development costs are spread, unit costs to the U.S. services are reduced, and forward materiel support is facilitated.

As depicted in Figure 2-1, FMS sales are made to countries of strategic importance to the United States, mainly to those with whom she has longstanding

alliances and other defense relationships. And the shaded blocks in Figure 2-1 are clear to indicate the principal objectives she pursue through FMS and commercial sales, and other arms transfer arrangements. [Ref. 1]

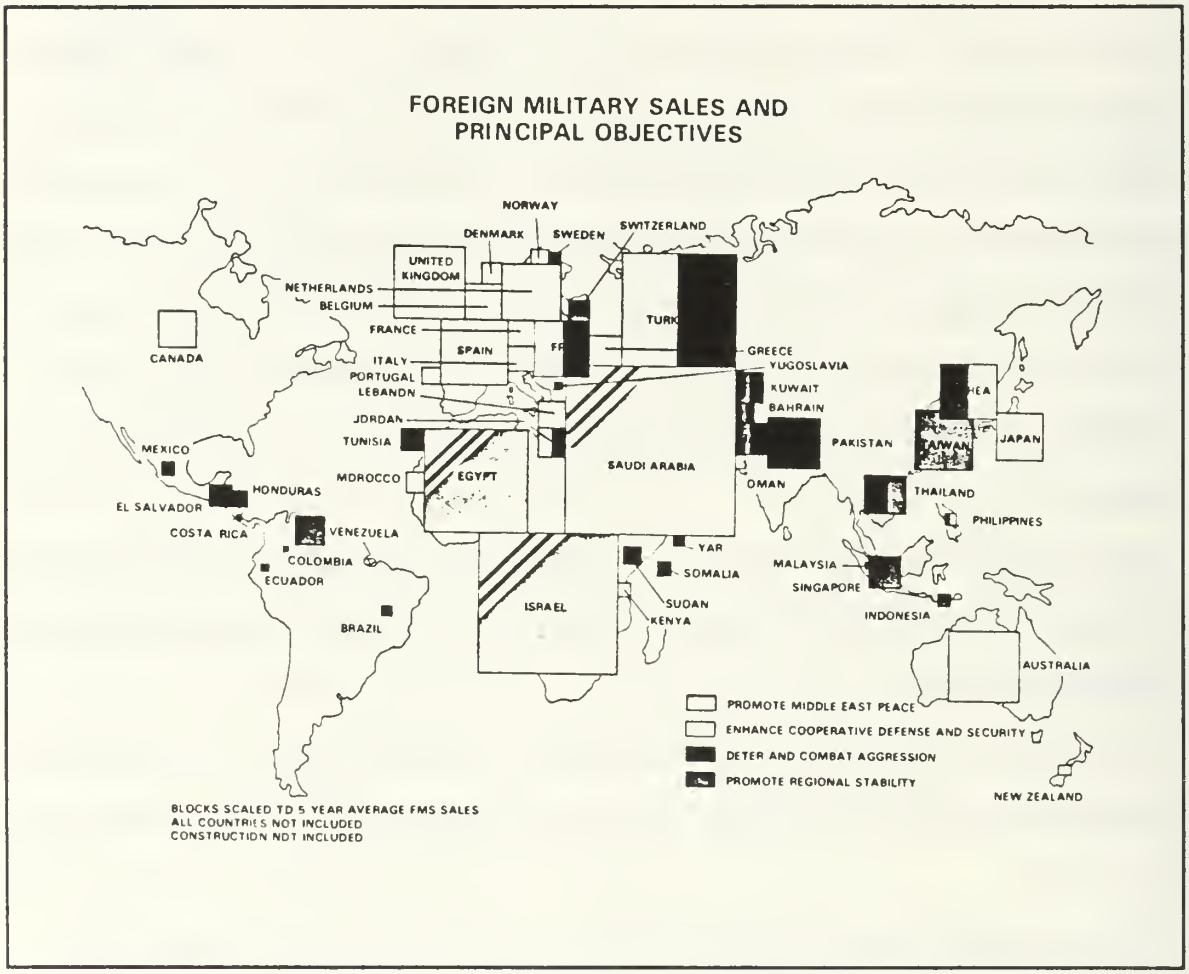

Figure 2-1 Foreign Military Sales and Principal Objectives

B. BACKGROUND--A HISTORICAL PERCEPTION

There is no doubt, in the current century the United States role has generally been that of our world's largest arms exporter. However, it was not until World War I that the U.S. began active involvement in providing aid on a massive scale. And most of the assistance flowed through private channels, because of a neutralism

policy. The Neutrality Act of 1939 amended the previous neutrality acts and allowed the sales of war materials to the allies but without committing any direct U.S. support. This is the first step in the development of Foreign Military Sales policy and activities. The second step was the President Roosevelt's - - Lend Lease Act of 1941. Since the involvement in World War II, pushed the United States to assist her allies by supplying military defense articles and services. First to Great Britian, then Russia and 42 other countries. Under this Act the U.S. provided $48.5 billion in defense articles to those countries. Only $8 billion was repaid through reverse lend lease and unpaid balances have been a source of controversy ever since. [Ref. 2]

The Military Assistance Grant Aid Program that we know today really began with the formulation and acceptance of the " Truman Doctrine " in 1947. Initially the policy of containment provided assistance to Greece and Turkey. The policy was extended to include China and the Philippines, and with the establishment of North Atlantic Treaty Organization (NATO) there was a further geographic extension of grant aid programs. Of note here is the historical importance of that doctrine, as it still guides much of the assistance and sales programs today. It is recognized as the basis for Foreign Military Assistance Program, the present of the Foreign Military Sales Program.

The Mutual Defense Assistance Act of 1949, authorized grant military aid and sales of defense equipments to allied countries. This is the first time that Foreign Military Sales became a reality. [Ref. 3]

Under the Mutual Security Act of 1956, the State Department established the authority to control export licenses for arms, ammunition and implements of war.

Nevertheless, the concept of Foreign Military Sales as a distinct entity began to surface by the end of the 1950's.

Several events in the later days set the stage for the birth of the Foreign Military Sales Program. The most important of these were a worsening U.S. balance of payments. The net liquidity balance dropped sharply due to an increase in liquid liabilities and private capital outflows, resulting in a decrease of U.S. reserve assets. Other events included the depletion of U.S. surplus military property, a change in attitudes towards the " giveaway " programs, and finally the economic recovery of Western Europe.

In that atmosphere, the Foreign Assistance Act of 1961 was enacted by the Congress, authorizing and encouraging the use of Foreign Military Sales. It mainly specified the Government Agencies that furnished assistance were to be reimbursed from funds available in an amount not less than the value of the articles or services. The current legislative basis for reimbursable export sales were provided by this act, along with comprehensive eligibility requirements for both the Military Assistance Program (MAP) and for Foreign Military Sales (FMS). [Ref. 4]

The efforts of the national defense establishment resulted in a rapid increase in foreign military sales; however, the Congress expressed disapproval of the methods when they finally came to light. As a result, Congressional restrictions were placed on the use of sales by the defense establishment. The enactment of the Foreign Military Sales Act of 1968 provided guidance on the " intent " of the Congress and subsequent authorizations and appropriations reflected further guidance and restrictions. In that act, the Congress established the following FMS policy :

1. Declared the ultimate goal of the U.S. to be a world free of the dangers and burdens of armaments.

2. Affirmed the increasing cost and complexity of defense equipment and recognized that there continues a need for international defense cooperation, to maintain peace and security.
3. Established that the U.S. will facilitate the common defense by entering into international arrangements with friendly countries on projects of cooperative exchange of data, research, development, production, procurement and logistic support.
4. Authorized sales to friendly countries to equip their forces with due regard to the impact on social and economic development and on arms races.
5. Declared that all such sales be approved only when they are consistent with the foreign policy interests of the U.S..

With the advent of the seventies, the Nixon Doctrine was promulgated and a new era of negotiation and U.S. foreign policy evolved. The Nixon Doctrine contains three key elements; keeping treaty agreements, providing a nuclear shield, and providing economic and military assistance.

The clear statement regarding the provision of military assistance could be taken as a new imperative for old programs, and the executive branch requests for increased grant aid funds is fiscal years 1971,1972 and 1973 bear this out. There have been a number of instances however, when the Administration has stressed the key issue, a reduction of the U.S. role and greater military self reliance on the part of her allies.

In his state of the Union Message in 1970, the President re-emphasized this as follows

> The nations of each part of the world should assume the primary responsibility for their own well-being; and they themselves should determine the terms of that well-being.

The implications of greater self reliance and the assumption of primary responsibility indicate a greater cost sharing role for her allies.This could be accomplished through the Foreign Military Sales Program and lends emphasis to

that program. Both the reimbursable and non-reimbursable security assistance programs are being fostered by the Nixon Doctrine.

In summary, the Nixon Doctrine provides impetus to all security assistance programs, and places special emphasis on the Foreign Military Sales Program, particularly in the long range. [Ref. 5]

A law started the third stage in the evolution of FMS policy which is known as the Humphrey Morgan Act--International Security Assistance and Arms Export Control Act of 1976 (AECA). The AECA defines the Statutory purposes for sales of defense items. It states that the United States government is authorized to sell defense articles and defense services to allies and friendly foreign governments

In accordance with the restraints and controls specified

In law, and

In furtherance of the security objectives of the United States.

In further states that defense articles and services may be sold for the purposes of

1. Internal security
2. Legitimate self-defense
3. Participation in regional or collective security arrangements, and to
4. Enable foreign military forces to engage in public works

Since after the passage of the Arms Export Control Act of 1976 (AECA), there has not been any subsequent legislation regarding the Foreign Military Sales Program. In this, the author would like to summarize his perception as follows.

The basic legislation which authorizes the Security Assistance Program is

1. The Foreign Assistance Act of 1961 (FAA)
2. The Arms Export Control Act of 1976 (AECA) and its
3. annual amendments by international Security and
4. Development Cooperation Acts.

1. The Military Assistance Program (MAP) - known as the
2. Grant Aid Program
3. The International Military Education and Training
4. (IMET) Program - which provides for grant training
5. The Foreign Military Sales (FMS) Program, and
6. The Foreign military Sales Credit (or loan) Program
7. The Foreign Military Construction Sales Program

The FAA provides the statutory purposes and guidance for the MAP and IMET programs. The basic authority for FMS and FMS Credit programs is the AECA which has been amended annually since 1976. [Ref. 6]

C. CURRENT POLICY

No one is in a position to predict the outcome of America's foreign policy tomorrow, but the present studies suggests some possibilities and some alternatives. Especially, to the countries which always rely on the purchasing of arms from the United States, a continuous monitoring of U.S. foreign policy will be more necessary.

Unlike its predecessor, the Reagan Administration contends that the United States should place heavy emphasis on arms transfer as a foreign policy instrument. In his States of the Union address on February 6, 1985, President Reagan placed security assistance in context :

> Without resources, diplomacy cannot succeed; our security assistance programs help friendly governments defend themselves, and give them confidence to work for peace. The Congress should understand that dollar for dollar security assistance contributes as much to global security as our own defense budget.

Security assistance strengthens formal alliances and contributes to stability in regions where formal alliances are not possible. Today U.S. security assistance programs in concert with other foreign policy tools have achieved some remarkable

Security assistance strengthens formal alliances and contributes to stability in regions where formal alliances are not possible. Today U.S. security assistance programs in concert with other foreign policy tools have achieved some remarkable results, most notably preserving peace in the Middle East, improving the security situation in Central American, preventing the Iran - Iraq war from spreading, containing Libyan adventurism, securing Thailand against challenges along its eastern border, maintaining the security of the Republic of South Korea, and strengthening the posture of our friends and allies in Europe, Asia, Africa, and Latin America.

However, as a consequence of increasing security assistance, a significant challenge is developed simultaneously. That is how to secure sufficient funding in today's difficult fiscal environment to meet its national security requirements. With this perception, a tendency of the Administration expects increased arms sales to result in a more favorable balance of payments can be deduced.

It is worthwhile to mention here that the volume of Commercial Arms Sales has grown significantly in both absolute and relative terms in recent years. The annual value of approved export licenses increased sharply from $3 billion to $4 billion in late 1970s to $8 billion to $12 billion in the early 1980s. In fact, for 1982-1985, commercial arms export authorizations totaled

$52 billion, or 77 percent of the $67 billion in FMS cash and credit purchase agreements. In the mid-1980s commercial arms sales began to rival the long-dominant security assistance program. Licensed export authorizations approached the value of FMS agreements, commercial arms exports were conservatively reported at more than 30 percent of FMS deliveries, and the number of U.S. contract personnel implementing commercial arms exports abroad was about

double the security assistance personnel contingent overseas. If these trends continue, commercial arms exports will overtake the FMS program as the main channel of the U.S. arms transfers in the 1990s.

The most remarkable feature of this growth of commercial arms sales has been its steadiness, notwithstanding the major shifts in legislative and policy directions since the 1970s. Neither the new and changing legal regime of the AECA nor the abrupt arms transfer policy shifts of the Carter and Reagan Administrations have had discernible effect on this historical trend. There is no evidence that this unprecedented expansion of commercial arms exports will have any significant affection on other channel of the U.S. arms transfers.

But a silent point of more complex and comprehensive regulations, intensified enforcement of export controls, and declining license approval rates has occurred.

Foreign Military Sales (FMS) is still an important instrument supporting United States security strategy. Its policies are derived from U.S. statutes, Presidential and States Department policies, and Department of Defense directives which implement statutory guidance and Administration policies. A framework of the Reagan Administration global arms transfer, the basic FMS policies were developed on the following

1. Sales will be controlled in accordance with U.S. laws and presidential determinations.
2. Discussions regarding sales are made on a case-by case basis, consistent with our national foreign policy objectives.
3. Sales are not encouraged or promoted. Rather, the DOD will be responsive to the legitimate defense needs of our foreign friends and allies.
4. Offers for sales are made only in response to foreign requests. The DOD does not market for defense sales. We rely on the military forces of our friends and allies to provide the bulwark of their own defense. The United States cannot and should not strive to protect its security interests throughout the

world solely with U.S. forces, but will respond to the stated needs of our friends.

5. Sales must be in the U.S. national interest and meet a valid military requirement.
6. Through FMS we seek to strengthen our own security by strengthening the defense of countries whose security is closely related to our own. We ensure that foreign demands do not impact on the resources of U.S. forces.
7. We deal evenhandedly with U.S. firms. We encourage U.S. industry participation in sales and provide assistance consistent with U.S. trade policies. We do not compete with industry for sales, if industry can otherwise complete the sale.

As matter of policy, the final U.S. government decisions on specific transfer of defense equipment or services under FMS is reached only after receipt of a request from a foreign government or international organization. Not all requests are approved and many require extensive review and consideration prior to release decision. A purchaser is made eligible to participate in the FMS program only after the President makes a determination pursuant to AECA. Put a question here is how does one determine that the sales is in the national interest, consistent with foreign policy of the United States and that such sales will strengthen the security of the United States and promote world peace ?

For U.S. arms sales policy is the consequence of many intersecting and interactive factors; among these are public and Congressional attitudes, domestic and foreign economic interests, strategic concerns, and the political philosophy of the President. What is not in doubt in my mind is that most of this decision was made based on political consideration. [Ref. 7]

III. THE ROLE OF U.S. FMS ORGANIZATIONS

The United States Security Assistance Program has its background in U.S. public laws which contain security assistance authorization, appropriations, restrictions, and reporting relationship. To understand how this legislation is welded into a coherent foreign policy program, it is appropriate to briefly discuss the roles of the three branches of the U.S. Federal Government with respect to security assistance.

A. THE ROLE OF LEGISLATIVE BRANCH

1. Background

The United States has provided billions of dollars in military assistance to friendly and allied nations since World War II on the premise that the security and economic well-being of friendly countries is essential to U.S. security. This principle was inherent in the Marshall Plan and in both the Truman and Nixon Doctrines. The Congress, over the years, has enacted more than 30 pieces of military assistance legislation. The Mutual Defense Assistance Act of 1949, the Mutual Security Act of 1951, the Mutual Security Act of 1954, the Foreign Assistance Act of 1961, the Foreign Military Sales Act of 1968, and the Arms Export Control Act of 1976 are legislative milestones in the evolution of today's security assistance programs,which were described briefly in the previous section.

2. Congress

The Congress of the United States, as provided by Article I, Section 1, of the United States Constitution, is vested with all legislative powers. In terms of security assistance, Congressional power and influence are exerted in several ways.

1. Development, consideration, and action on legislation to establish or amend basic security assistance authorize acts.
2. Enactment of appropriation acts.
3. Passage of Joint Resolutions in the form of a continuing Resolution Authority (CRA) to permit the incurrence of obligations to carry on essential security assistance program activities until appropriation action is complete.
4. Hearing and investigation into special areas of interest, to include instructions to the General Accounting Office (GAO), the Congressional Research Service (CRS) to accomplish special reviews.
5. Ratification of treaties which may have security assistance implications. [Ref. 8]

The Congress authorizes the Foreign Military Sales Program by enactment of laws. These laws are brought about by changes in the world environment and reflect the foreign policy of the United States at any given point in time. The "sense" of the Congress, as expressed in these acts, is intended to convey general guidance as well as objectives and restraints. In order to ensure that the intent of the law is being adhered to, the Congress requires that the President must submit to Congress (30 days prior to his consent, every proposed sales that exceeds $25 millions) for their review and disapproval, all potential Foreign Military Sales prior to consummation. As a further assurance that the FMS is being conducted within the guidelines, the Congress requires annual reports from the President on FMS status.

3. Congressional Offices

In addition, there are certain offices that regularly conduct and management of the United States Security Assistance Program. Such as

a. The Congressional Budget Office (CBO)

The CBO was established by the Congressional Budget Act of 1974, approved July 12, 1974, which also created a new procedure by which the United States Congress considers and acts upon the annual Federal budget. This new

process enables the Congress to have an overview of the Federal budget and to make overall decisions regarding spending and taxing levels and the deficit or surplus these levels incur. Congress is thus provided with a mechanism through which it can weigh the priorities for national resource allocation and explicitly address issues of fiscal policy.

b. The General Accounting Officer (GAO)

It is under the control and direction of the Comptroller General of the United States, appointed by the President with the Advice and consent of Senate for a terms of 15 years. The GAO has the following basic purposes: to assist the Congress, its committees, and its Members in carrying out their legislative and oversight responsibilities; consistent with its role as an independent nonpolitical agency in the legislative branch; to carry out legal, accounting, auditing, and claims settlement functions with respect to Federal Government programs and operations as assigned by the Congress; and to make recommendations designed to provide for more efficient and effective Government operations.

c. The Cost Accounting Standards Boards

The boards is composed of the Comptroller General of the United States, who serves as Chairman, and four members appointed by him. The Board promulgates cost accounting standards designed to achieve uniformity and consistency in the cost accounting principles followed by defense contractors and subcontractors under Federal contracts. In as much as the Foreign Military Sales Program involves new procurement, the impact of the Board on security assistance is apparent.

d. Liberty of the Congress

It is under the organic law, the Library's fist responsibility is service to Congress. One department, the Congressional Research Service, accomplishes special studies for the Congress. Often, these study are concerned with Security Assistance issues and policies. [Ref. 9]

B. THE ROLE OF JUDICIAL BRANCH

While statutes and agency regulations supply broad guidelines for administering Government contracts, there are many aspects of day-to-day contract administration on which the regulations provide little or no guidance. As a result, contractors and Government officials must frequently look to decided cases for purposes of interpreting contract provisions and ascertaining appropriate courses of conduct in administering contract performance. The decisional guidance is supplied by judicial forums.

The Constitution of the United States, Article III, Section 1, describe that the judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts. It is reasonable to conclude that the courts have very minimal involvement in the day-to-day activities of security assistance. However, involvement is possible should a contractor, who is supplying the military goods or services under a Department of Defense contract associated with FMS, decide to pursue legal remedy in the event of a dispute through the appropriate court of entry. [Ref. 10]

C. THE ROLE OF EXECUTIVE BRANCH

1. Background

The Foreign Assistance Act of 1961, as amended, provides the authority for both economic assistance and the Military Assistance Program. Foreign Military Sales are made under the authority of the Foreign Military Sales Act of 1968 and the Arms Export Control Act of 1976. These three acts and their respective amendments establish the basic policies and provide authorities, measures and restrictions for United States Present Security Assistance Program, and more specifically for FMS program that impact various Departments in the United States Government.

Within the Branch of the United States Government, the National Security Council, the Office of Management and Budget, the Department of the Commerce, Department of the Treasury and others all have responsibilities related to security assistance. In addition, aside from the President, the Principal legislated responsibilities fall to the Secretary of State and to the Secretary of Defense. [Ref. 1:p. 3-1]

2. Executive Office of the President

The President of the United States determines which countries and international organizations are eligible for Foreign Military Sales in accordance with the current Foreign Military Sales Act. Further, the President has numerous assistants, cabinet members, and other subordinate officials to oversee the conduct of the U.S. security assistance program.

a. National Security Council (NSC)

NSC is undoubtedly the highest foreign policy advisory council in the Government. Leaded by the President of the United States, its statutory

members include the Vice President, the Secretary of State and the Secretary of defense. The Chairman of the Joint Chiefs of Staff is the Statutory military advisor and the Director of Central Intelligence is its intelligence advisor.

The function of the Council is to advise the President with respect to the integration of domestic, foreign, and military policies relating to national security. Certainly, many security assistance issues fall into this category.

b. Office of Management and Budget (OMB)

The OMB assists the President in the development of the Federal budget. Security assistance budgetary accounts are displayed in the documents making up the budget of the United States Government.

With respect to Foreign Military Sales, for example, OMB is highly interested in the impact on DoD military and civilian manpower, facilities, performing accounts, and so forth. [Ref. 11:pp. 85-91]

3. Department of State

The Congress has continually insisted that the Security Assistance Program be considered as an integral part of the United States foreign policy. That concern and desire is explicitly stated in the Arms Export Control Act (AECA) and in Executive Order 11501. Under the AECA, the Secretary of State acts under the direction of the President and provides continuous supervision and direction to both the grant and Foreign Military Sales programs as well as the licensing of exports of commercial sales. He determines wether there should be a program or sale to a country, and, if so, the value of the program. He is also responsible for the integration of the military assistance programs and sales with other U.S. activities with foreign countries and for foreign policy. He is responsible for review and authorization of all agreements.

Within the Department of State, this Secretary's responsibility is vested in the Bureau of Politico-Military Affairs. This bureau generates policy guidance and procedures concerning issues affecting United States security, Foreign Military Sales, and arms control. The Department of State, through the bureau, maintains constant contact with the Departments of Defense and Commerce in inter-departmental discussions affecting the International Trade.

With the Bureau of Politico-Military affairs, there are three offices that are involved in the coordination and approval of exports. They are:

a. The Office of Security Assistance and Sales (SAS)

The SAS Office coordinates Foreign Military Sales and assistance grants to foreign countries. This office also analyzes the various regions and countries of the world to identify which countries should require military grants.

b. The Office of Munition Control (OMC)

The OMC Office reviews all export applications for arms, ammunitions, implements of war, and any related technical data transfers. In addition, commercial products are reviewed if it is determined that they have possible military application. The OMC is the key office that makes the final decision concerning military and some direct commercial exports.

c. The Office of Planning and Analysis for International Security

This Office is basically responsible for coordinating the policy formulation groups of the Department of States, including the five regional bureaus. Each of the regional bureaus is headed by Assistant Secretaries of State and each is served by directors within their bureau who coordinate policy on a

country by country basis. The United States Ambassadors provide the latest political assessment of any country as needed in the policy formulation.

4. Department of Commerce

The Basic function of the Department of Commerce is to provide for the overall economic growth and technical development of the United States. Within this function, world trade expansion plays a vital role and is the primary responsibility of the Office of Domestic and International Business Administration (DIBA). The DIBA, through its bureaus, conducts programs involving the following activities:

1. Competitive assessment of the United States industry in domestic and world markets.
2. Expansion of exports.
3. Export control administration.
4. Federal recognition and participation in international expositions and trade fairs.

Within the Office of Domestic and International Business Administration, the Bureau of International Commerce (BIC) has the responsibility for developing and implementing the Department of Commerce export programs. The export development programs are determined on a government-by-government basis consistent with the foreign policy established by the Department of State.

Within the Bureau of International Commerce (BIC), the Overseas Product Sale Group has the responsibility of assisting with the commercial sales portion of Foreign Military Sales. The Overseas Product Sales Group also serves as the focal point for all export opportunities originating from NATO organizations.

5. Department of Treasury

In the field of foreign trade, Department of Treasury is basically concerned with the possibility of the United States exports ending up in nations that

are hostile to the United States. At the present time, this means that the Department of Treasury would prohibit exports to embargo countries such as Iran, Libya, etc. The Department also monitors the transfer of goods to a third country to assure that the third country is not an embargoed country. Also, the Department of Treasury, as part of financing of trade agreements, participates extensively in the financial negotiations between the United States and foreign buyers. These Department activities are basically carried out by two offices.

a. The Office of Foreign Assets Control (FAC)

This Office provides the monitoring of export activities of the United States owned foreign businesses which are involved in the manufacture of products that have no the United States manufactured components included in the end item. If the potential buyer of the end item is one of the embargoed countries, the FAC would attempt, through diplomatic channels, to prohibit the sale. In addition, the FAC evaluates the contracts between the United States companies and foreign companies to assure that the arrangements are not beneficial to embargoed countries.

It should be recognized that the Department of Treasury, through the Office of Foreign Assets Control, exercises extensive control over goods exported from the United States and goods manufactured outside the United States by companies that have any U.S. ownership (minority representation as well as solely owned operations).

b. The Office of National Security (ONS)

The ONS becomes involved in the international trade activity in three base areas:

1. United States Trade Policy.

2. Financing of trade agreements.
3. Expedite exports.

Relative to the United States trade policy formulation, the responsibility of ONS is to conduct economic analysis concerning impact upon the United States economy as well as the economy of the foreign country. In the area of financing of trade agreements, ONS participates in the financial portion of the contract negotiations between the United States and the foreign buyer. It also reviews the trade agreements for credit risk evaluation and to assure the best utilization of the United States Government backing to credit institutions. The ONS serves as a focal point to assess the progress of export programs during the lengthy government approval process. It is the intent of this office to monitor and expedite export programs.

In summary, the Department of Treasury exercises broad control over export programs, both military and commercial, to assure that they are compatible with the United States Trade and Security Policies and that the export is the best interest of the United States and the receiving foreign country. [Ref. 13]

6. Department of Defense

The Department of Defense (DOD) is the principal government agency involved in the routine planning, implementation, and administration of the United States Foreign Military Sales. Under the Section 623 of the Foreign Assistance Act (FAA) and Section 42 of the Arms Export Control Act (AECA), the Secretary of Defense is responsible for program implementation for government-to-government programs. This includes:

1. The establishment of priorities in procurement, allocation, and delivery of equipment.
2. The determination of military end-item requirements.

3. The procurement of military equipment in a manner which permits integration with services programs.
4. The supervision of grant end-item use.
5. The supervision of training of foreign military personnel, and
6. The movement of and delivery of military equipment.

The growing size, complexity, and importance of the security assistance program requires that recommendations, decisions, and implementing actions be coordinated and tracked in a timely manner to ensure coherent support of foreign and national security objectives. Several departments, agencies, and offices are involved in the coordinations. (See Figure 3-1)

Within the Department of Defense, there are some offices that become involved in the sale of military items or commercial items of military value to foreign governments. These offices are:

a. The Defense Security Assistance Agency (DSAA)

The DSAA was organized in 1971 to act as the focal point in the Department of Defense for all security assistance activities. The agency is redelegated the responsibilities and authorities assigned to the Security of Defense to administer and execute the security assistance program. A primary role of the DSAA is to act as the coordinator of the political considerations of the Department of State and the military considerations of the Department of Defense.

The DSAA is charged with a variety of Foreign Military Sales functions; including the generation and maintenance of the procedural guidance through the Department of Defense Security Assistance Management Manual . Other functions, in addition to participating in the top level planning, programming, and reviewing of Foreign Military Sales, are:

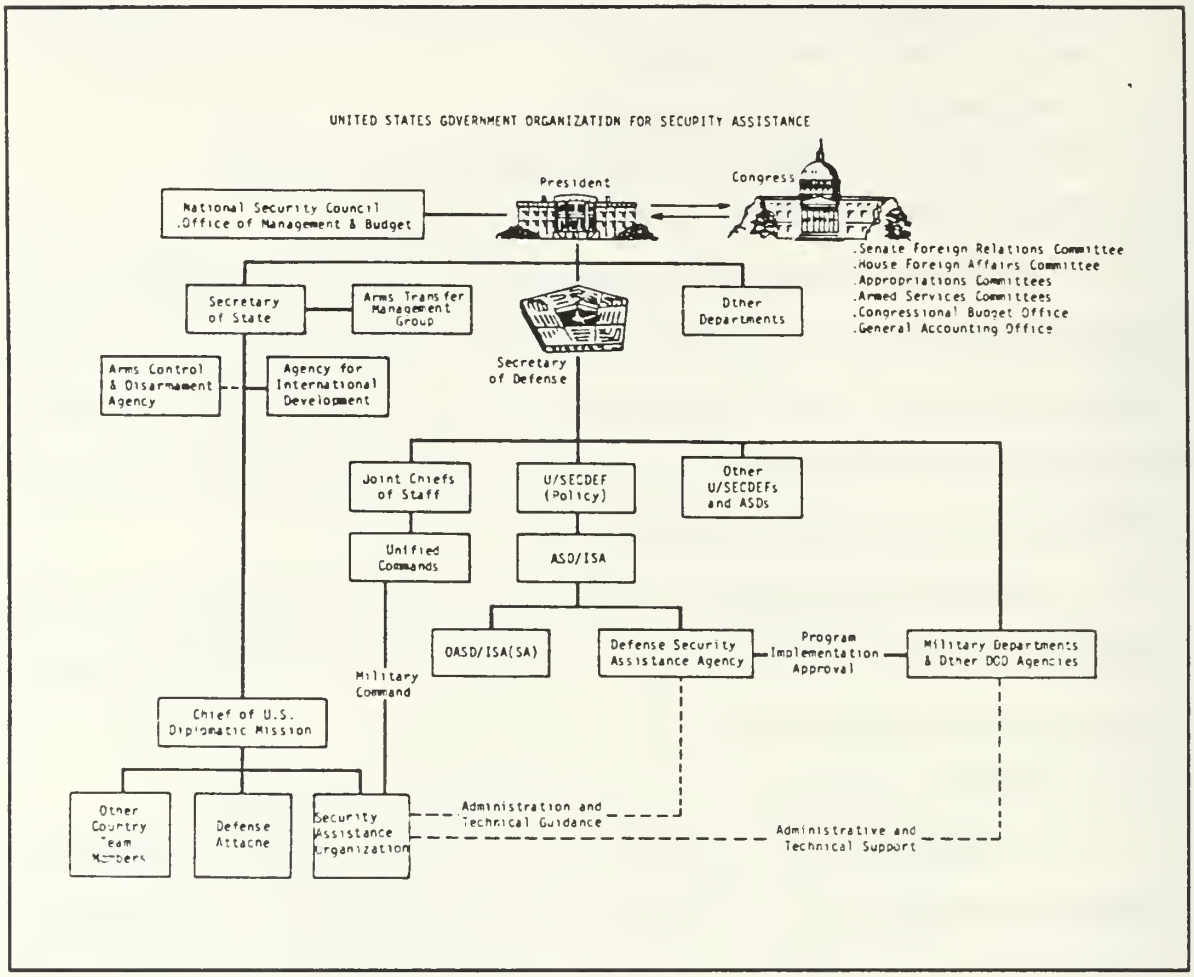

Figure 3-1 U.S. Government Organization for Security Assistance

1. Conducting negotiations with the foreign countries.
2. Interfacing with and assisting the U.S. industry in their efforts to get export approval for industry to foreign government sales through the Department of States.
3. Managing FMS credit arrangements and guaranties of private financing for FMS. [Ref. 14:pp. 42-44]

b. The Assistant Secretary of Defense for International Security Affairs and International Security Policy (ASD/ISA) & (ASD/ISP)

The Assistant Secretary of Defense International Security Affairs and Policy is the principal staff assistance to the Secretary of Defense in the functional field of International Security which encompasses Foreign Military Sales. Both formulate policy, and represent the Department of Defense with other agencies in matters which concern Security Assistance, policy and guidance. With regard to Armaments Cooperation, Assistant Secretary of Defense International Affairs (ASD/ISA) has policy coordination responsibility for African/Asian/Inter-American and Near East programs. Assistant Secretary of Defense International Security Policy (ASD/ISP) has policy coordination responsibility for Europe/NATO/Nuclear/Chemical programs.

c. The elements of Army, Navy, and Air Force including the Joint Chiefs of Staff (JCS)

The three armed services- army, navy, and air force are basically responsible for presenting the services position on the proposed military assistance program. The second function of the specific service involved in Foreign Military Sales activity is to assist DSAA during negotiations. The service can provide the detailed analysis and evaluations that are necessary during the negotiation process. The third area that the services become involved in the Foreign Military Sales activity is from the management and administration of the sale activity during its performance. These activities are performed in the following areas by services:

1. Army - Director of International Logistics.
2. Navy - Security Assistance Division.
3. Air Force - Military Assistance of Sales.

Other service related responsibilities are performed by the Joint Chiefs of Staff (JCS). They Are responsible to the Secretary of Defense for assuring that the U.S. National Security Planning accounts for all existing or planned Foreign Military Sales. In addition, The Joint Chiefs of Staff are responsible for developing recommendations for the Security Assistance Programs of the United States Allies. [Ref. 15:pp. 3-1-5]

IV. FMS CASE IMPLEMENTATION

A. GENERAL

Webster defines a case in part, as "a set of circumstances or conditions" and "a situation requiring investigation or action." In Foreign Military Sales (FMS), a "case" is defined in the Glossary of Selected Terms of the DOD Security Assistance Management Manual as "a contractual sales agreement between the United States Government and an eligible foreign country or international organization documented by a DD Form 1513..." To illustrate the relationship of the Webster definition of a case and an Foreign Military Sales case, we see that an FMS case is a set of conditions involving both the United States Government and the purchaser. Further, it spells out actions required subject to those conditions. Before examining specific types of FMS cases, it is important to distinguish between the varying categories of items and services which can be sold under FMS.

The President of the United States determines which countries and international organizations are eligible for Foreign Military Sales in accordance with the current Foreign Military Sales Act. Further, the President has the authority to set the terms and conditions for such Foreign Military Sales. The International Security Assistance and Arms Export Control Act of 1976 set forth the major constrains which govern the Foreign Military Sales activities. Section 21 of the Arms Export Control Act, as amended (AECA), authorizes the sale of defense articles and defense services from the stocks of the Department of Defense. Section 22, AECA, authorizes the United States Government to enter into contracts for the procurement of defense articles or defense services for subsequent sale to a

foreign customer. Section 23 and 24, AECA, authorize sales of articles or services by means of direct or guaranteed credit sales, respectively.

Therefore, before initiating a request for a sale, the potential buyer must first determine whether the article is available and can be bought directly through United States industry.

1. Defense Article

According to section 47(3), AECA, the term "defense article" includes:

1. any weapon, weapon system, munition, aircraft, vessel, boat, or other implement of war,
2. any properly, installation, commodity, material, equipment, supply, or goods used for the purposes of making military sales,
3. any machinery, facility, tool, material, supply, or other item necessary for the manufacture, production, processing, repair, servicing, storage, construction, transportation, operation, or use of any article listed in this paragraph, and
4. any component or part of any article listed in this paragraph, but does not include merchant vessels or (as defined by Atomic Energy Act of 1954) source material, by-product material, special nuclear material, production facilities, utilization facilities, or atomic weapons or articles involving Restricted Data.

2. Excess Defense Articles

Section 644(g) of the Foreign Assistance Act of 1961, as amended, defines "excess defense articles" as:

> ... the quantity of defense articles owned by the United States Government, and not procured in anticipation of military assistance or sales requirements, or pursuant to a military assistance or sales order, which is in excess of the Approved Force Acquisition Objective and Approved Force Retention Stock of all Department of Defense Components at the time such articles are dropped from inventory by the supplying agency for delivery to countries or international organizations under the FAA 1961.

3. Major Defense Equipment (MDE)

MDE is essentially a subcategory under "defense articles." MDE in accordance with Section 47(6), AECA, means:

> ... any item of significant combat equipment on the United States Munitions List having a non-recurring research and development cost of more than $50,000,000 or a total production cost of more than $200,000,000.

4. Defense Service

Section 47(4), AECA, defines a "defense service" as including

> ... any service, test, inspection, repair, training, publication, technical or other assistance, or defense information (as defined in section 644(e) of the Foreign Assistance Act of 1961), used for the purposes of making military sales, but does not include design and construction services sold under section 29 of the AECA.

5. Defense Information

Section 644(e) of the Foreign Assistance Act of 1961, as amended, defines "defense information" as including

> ... any document, writing, sketch, photograph, plan, model, specification, design, prototype, or other recorded or oral information relating to any defense article or defense service, but shall not include Restricted Data as defined by the Atomic Energy Act of 1954, as amended, and data removed from the Restricted Data category under section 142d of that Act.

6. Design and Construction Services

Section 47(8), AECA, defines the term "design and construction services." as

> ... with respect to sales under section 29 of this Act, the design and construction of real property facilities, including necessary construction equipment and materials, engineering services, construction contract management services relating thereto, and technical advisory assistance in the operation and maintenance of real property facilities provided or performed by any department or agency of the Department of Defense or by a contractor pursuant to a contract with such department or agency.

7. Training

Section 47(5), AECA, defines "training" as including

> ... formal or informal instruction of foreign students in the United States or overseas by officers or employees of the United States, contract technicians, or contractors (including instruction at civilian institutions), or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientations, training exercise, and military advice to foreign military units and forces. [Ref. 16:pp. 9-1 - 9-4]

B. CATEGORIES OF FMS CASES

In DoD Security Assistance Management Manual, Chapter 7, Section I, divides standard Foreign Military Sales cases into Defined Order Cases, Blanket Order Cases, Cooperative Logistics Supply Support Arrangements (CLSSAs), and Non-Standard Support.

1. Defined Order Cases

A Defined Order case is one in which the items, services or training to be provided are stated explicitly on the Letter of Offer and Acceptance (LOA or DD Form 1513). See Figure 4-1 which is an example of a defined order case.

A defined order case normally requires a complete price and availability study.

The following types of materiel and services are normally provided through Defined Order cases :

1. System/Package Sales including major items and weapon systems and any related requirements to activate and operate the item or system for an initial period of time.
2. Munitions, ammunition and other explosives.
3. Transportation services.
4. Aircraft Ferry.
5. Cartridge Activated Devices/Propellant Activated Devices (CAD/PAD).
6. Technical Data Packages (TDP).

UNITED STATES DEPARTMENT OF DEFENSE
OFFER AND ACCEPTANCE

(1) PURCHASER (Name and Address) (Zip Code)
Government of Bandaria
Embassy of Bandaria
1000 Bandaria Road, NW
Washington DC 20008

(2) PURCHASER'S REFERENCE: Bandaria Letter 93 1 Oct 19XX

(3) CASE IDENTIFIER: BD-D-TAA(J)

OFFER

Pursuant to the Arms Export Control Act, the Government of the United States (USG) hereby offers to sell to the above purchaser the defense articles and defense services listed below (hereinafter referred to collectively as "items" and individually as "defense articles" or "defense services") subject to the terms contained herein and conditions set forth in Annex A, and to such other special terms and conditions which may be a part of and appended to, the Offer and Acceptance.

(4) Signature (US Dept./Agency Authorized Representative)

(5) MGen, Director, AF/PAI
Typed Name and Title

(6) ADDRESS: Headquarters USAF (PAI)
Washington DC 20330

(7) DATE: 15 Nov 19XX

(8) THIS OFFER EXPIRES: 1 Feb 19XY

(9) 1 Dec 19XX
Countersignature (Office of the Comptroller DSAA) (Date)

(10) DSAA Comptroller
Typed Name and Title

(11) DSAA ACCOUNTING ACTIVITY
AFAFC/SAAC
Lowry AFB CO 80279

NOTE: This offer must be accepted not later than the date shown in block 8. Within five (5) days of its acceptance you must notify the Office of the Comptroller, DSAA. Otherwise this Offer is cancelled and retention of initial deposit by offeror pending disposition instructions shall not be deemed a waiver of such cancellation. Request prompt notification if this offer is rejected.

ITEM OR REF NO (12)	ITEM DESCRIPTION (13)	QUANTITY (14)	UNIT OF ISSUE (15)	ESTIMATED UNIT COST (16)	ESTIMATED TOTAL COST (17)	AVAILABILITY AND REMARKS (18)	DEGREE OF LEASE CODE (19)	DELIVERY TERM CODE (20)
001 TAB	(N00)000000FMSTRNG(1)(N)	1	ea		XX,XXX	S(4) T/A-3 AP 3 qtr/XY	N/A	N/A
	a. WSCN 0004A/0177004/ Foreign Off School, 8 wks			X,XXX				
	b. WSCN 0004B/0171002/ Air Comd & Staff Col, 27 wks			XX,XXX		S(6)AP 4 qtr/XY	N/A	N/A
998 TAC	(N7E)000000S365003(0)(N) WSCN 0998/0365003/Medical Services				X,XXX	S(-) TA-3 AP	N/A	N/A

(21) ESTIMATED COST	$ XX,XXX	2 Atch
(22) ESTIMATED PACKING, CRATING, AND HANDLING COST	$	1. Supp Cond (Training)
(23) ESTIMATED GENERAL ADMINISTRATIVE COSTS	$ X,XXX	2. Financial Annex
(24) ESTIMATED CHARGES FOR SUPPLY SUPPORT ARRANGEMENT	$	
(25) OTHER ESTIMATED COSTS (Specify)	$	
(26) ESTIMATED TOTAL COSTS	$ XX,XXX	

(27) TERMS
Cash Prior To Delivery.
Payment Will Be Made In Accordance With Provisions Of The Financial Annex.

(28) AMOUNT OF INITIAL DEPOSIT $ XX,XXX

ACCEPTANCE

(29) I am a duly authorized representative of the Government of Bandaria and upon behalf of said Government accept this offer under the terms and conditions contained herein (30) this 15 day of January 19 XY

(31) SIGNATURE

(32) [An Authorized Representative]
TYPED NAME AND TITLE

(33) MARK FOR CODE N/A

(34) FREIGHT FORWARDER CODE N/A

(35) PROCURING AGENCY Bandarian Air Force

(36) DESIGNATED PAYING OFFICE
Embassy of Bandaria

(37) ADDRESS OF DESIGNATED PAYING OFFICE
100 Bandaria Road, NW
Washington DC 20008

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Figure 4-1. Example of Define Order Case

2. Blanket Order Cases

Blanket Order FMS cases represent an agreement between a foreign country or international organization and the United States Government for a category of materiel or services (normally identifiable to one or more end items) with no definitive listing of items or quantities. See Figure 4-2 for an example of a Blanket Order case.

Blanket Order cases are usually used to process

1. Spares and Repair Parts: Items are normally those listed in Allowance Part Lists, Initial Spares Support Lists, Initial Outfitting Lists, and the Provisioning Master Data Record. Normally a case in this category is opened for follow-on support of a major item or weapon system after an initial support period.
2. Publications: To order, maintain and support defense articles and services, the following may be ordered through a blanket order case: forms, catalogs, manuals, stock lists, technical orders, engineering drawing specifications, reports, books, and maps.
3. Support Equipment: Repair parts, assemblies, components, special tools, test equipment, supplies and/or materiel recommended and/or allocated for supply and maintenance support of a weapon or end item.
4. Minor Modifications/Alterations Performed at U.S. Installations: Changes to an existing configuration as authorized by the DoD component concerned. The level of services must be specified in the case.
5. Technical Assistance Services: Services in the form of technical advice or performance of actions which require the expertise of a specialist.
6. Training: Formal (classroom) or informal (on the job) instruction of foreign students by DoD components, contractors, or by correspondence courses, technical, educational, or informational publications and media of all kinds.
7. Training Aid Devices: These are used principally to supplement information and/or training programs which the foreign purchaser uses for educational purposes.
8. Repair of Repairable Items: Any items of supply of a durable nature which can normally be economically restored, when unserviceable, to a serviceable condition through regular repair procedures can be covered under a Blanket Order FMS case.

UNITED STATES DEPARTMENT OF DEFENSE
OFFER AND ACCEPTANCE

(1) PURCHASER (Name and Address (Zip Code)
Government of Bandaria
Embassy of Bandaria
1000 Bandaria Road, NW
Washington DC 20008

(2) PURCHASER'S REFERENCE: Bandaria Letter 94 15 Oct 19XX

(3) CASE IDENTIFIER: BD-O-TAD(J)

OFFER

Pursuant to the Arms Export Control Act, the Government of the United States (USG) hereby offers to sell to the above purchaser the defense articles and defense services listed below (hereinafter referred to collectively as "items" and individually as "defense articles" or "defense services") subject to the terms contained herein and conditions set forth in Annex A, and to such other special terms and conditions which may be a part of, and appended to, this Offer and Acceptance.

(4) Signature (US Dept./Agency Authorized Representative)

(5) Typed Name and Title: MGen, Director, AF/PAI Headquarters USAF (PAI)

(6) ADDRESS: Washington DC 20330

(7) DATE: 1 Dec 19XX

(8) THIS OFFER EXPIRES: 15 Feb 19XY

(9) Countersignature (Office of the Comptroller, DSAA) (Date): 15 Dec 19XX

(10) Typed Name and Title: DSAA Comptroller

(11) DSAA ACCOUNTING ACTIVITY
AFAFC/SAAC
Lowry AFB CO 80279

NOTE: This offer must be accepted not later than the date shown in block 8. Within five (5) days of its acceptance you must notify the Office of the Comptroller, DSAA. Otherwise this Offer is cancelled and retention of initial deposit by offeror pending disposition instructions shall not be deemed a waiver of such cancellation. Request prompt notification if this offer is rejected.

ITEM OR REF NO (12)	ITEM DESCRIPTION (Including Stock Number if applicable) (13)	QUANTITY (14)	UNIT OF ISSUE (15)	ESTIMATED UNIT COST (16)	ESTIMATED TOTAL COST (17)	DELIVERY REMARKS (18)	DATE OF TAKE CODE (19)	DELIVERY TERM CODE (20)
999 TAE	(N00)000000FMSTRNG(1)(N) 0399000/Abbr Trng Plan Blanket Order Case For Period 1 April 19XY Thru 31 March 19XZ				XXX,XXX	X(-) TA-4 AP	N/A	N/A

(21) ESTIMATED COST	$ XXX,XXX	2 Atch 1. Supp Cond (Training) 2. Financial Annex
(22) ESTIMATED PACKING, CRATING AND HANDLING COST	$	
(23) ESTIMATED GENERAL ADMINISTRATIVE COSTS	$ XX,XXX	
(24) ESTIMATED CHARGES FOR SUPPLY SUPPORT ARRANGEMENT	$	
(25) OTHER ESTIMATED COSTS (Specify)	$ XXX,XXX	
(26) ESTIMATED TOTAL COSTS	$	

(27) TERMS

(28) AMOUNT OF INITIAL DEPOSIT $ XXX,XXX

Cash Prior To Delivery.
Dependable Undertaking.
Payment Will Be Made In Accordance With Provisions Of The Financial Annex.

ACCEPTANCE

(29) I am a duly authorized representative of the Government of Bandaria and upon behalf of said Government accept this offer under the terms and conditions contained herein (30) this 1 day of February 19 XY

(31) SIGNATURE

(32) [An Authorized Representative]
TYPED NAME AND TITLE

(33) MARK FOR CODE N/A

(34) FREIGHT FORWARDER CODE N/A

(35) PROCURING AGENCY Bandarian Air Force

(36) DESIGNATED PAYING OFFICE
Embassy of Bandaria

(37) ADDRESS OF DESIGNATED PAYING OFFICE
1000 Bandaria Road, NW
Washington DC 20008

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Figure 4-2. Example of Blanket Order Case

9. Items Restricted from Blanket Order Cases: Under Blanket Order FMS cases, certain restrictions are imposed. The following specific types of requirements may not be ordered
   - Classified materiel (except Air Force).
   - Classified publications (Navy only).
   - Explosive ordnance items.
   - Major Defense Equipment (MDE).
   - Significant Military Equipment (SME).
   - Lumber and other type commercial materiel.
   - Nonstandard items except for medical supplies/drugs.
   - Obsolete items (except Air Force).

3. Cooperative Logistics Supply Support Arrangements

Cooperative Logistics Supply Support Arrangements (CLSSAs) are peacetime military logistics support arrangements designed to provide responsive and continuous supply support at the depot level for U.S.-made military materiel possessed by foreign countries and international organizations. The CLSSA provides for the execution of Foreign Military Sales Orders (FMSOs) covering storage, and consumption as follows:

1. FMSO I: The FMSO I consists of an LOA covering the estimated dollar value and total initial agreed list of items and quantities to be stocked and maintained on order from procurement for support of the purchaser's U.S.-furnished equipment.
2. FMSO II: The FMSO II consists of an LOA covering the purchaser's estimated withdrawals of materiel from the supply system for an agreed period (normally one year). This CLSSA requisition case is undefined as to items and quantities and reflects in a dollar amount, the estimated consumption for the agreed period.

4. Non-Standard Support

DSAA/Plans-Support Division provides assistance for rehabilitation, training and logistics support of non-standard or foreign military equipment. This program furnishes interim solutions to countries that desire new U.S. equipment

but cannot acquire it due to production lead times, funding constraints or technology transfer considerations.

The program is not a new source of funding. Interested countries must use MAP, FMS credit or cash. Requests for both unclassified and classified projects should be sent via U.S. Embassies to DSAA/Plans-Support Division for initial coordination and further routing. [Ref. 16:pp. 9-1 - 9-10]

C. DOCUMENTATION PROCEDURES

1. Letter of Request (LOR)

Based upon the nature of the request, and the military department that has cognizance over the defense articles or services (including training), the process for negotiating and implementing a Foreign Military Sales case can vary widely. There are, however, some general guidelines to be followed. The first step is to determine the United States approved channels of submission for the Letter of Request (LOR) for planning and review data (P&R), price and availability data (P&A), and for an offer which is the DD Form 1513 Letter of Offer and Acceptance (LOA).

Although no specific format is required for an Letter of Request (LOR), the information should be as complete and detailed as is necessary for the service to provide an LOA that can guarantee a completely operable and supportable system for an initial period. And the LOR must contain at least the name and address of the originator and a traceable reference number, such as a message cite number or date-time group or a letter serial number and date. Further, the LOR are categorized as either "Requests for Significant Combat Equipment (SCE)" or "Requests for Other Foreign Military Sales," they are to be submitted to the United States Government agencies by the route specified in Figures 4-3 and 4-4.

2. DD Form 1513 - Letter of Offer and Acceptance (LOA)

In response to the buyer, a Letter of Offer and Acceptance (DD Form 1513) will be prepared (See Figure 4-5). The LOA is the form used for all foreign military sales of defense articles, services and training by the military departments and authorized defense agencies and when signed, is the official agreement between the U.S. and the purchasing nation regarding terms and conditions pertaining to furnishing certain goods and services.

As such, the DD Form 1513 and its enclosures must provide sufficient detailed information so as to make clear the obligations of the United States and the purchaser. The type and amount of information which must be conveyed will vary depending on the nature of the sales. However, at least some information which is supplemental to the preprinted "General Conditions" of Annex A (See Figure 4-6) of the DD Form 1513 must be provided for each sale.

The DD Form 1513 is the heart of the government-to-government Foreign Military Sales case, and therefore to purchaser requires extreme care in the preparation and close scrutiny during the approval process. On the other hand, failure by the United States Government to perform as agreed to in the Letter of Offer and Acceptance sometimes creates a deep resentment and a possible hostility within the foreign nation. It is, therefore, imperative that personnel involved in the processing and administration of the DD Form 1513 recognize that the credibility of the United States Government is at stake each time a Letter of Offer is accepted and a contract is created. Please see DoD 5105.38-M Security Assistance Management Manual Chapter 7, Section II, for more detailed instructions.

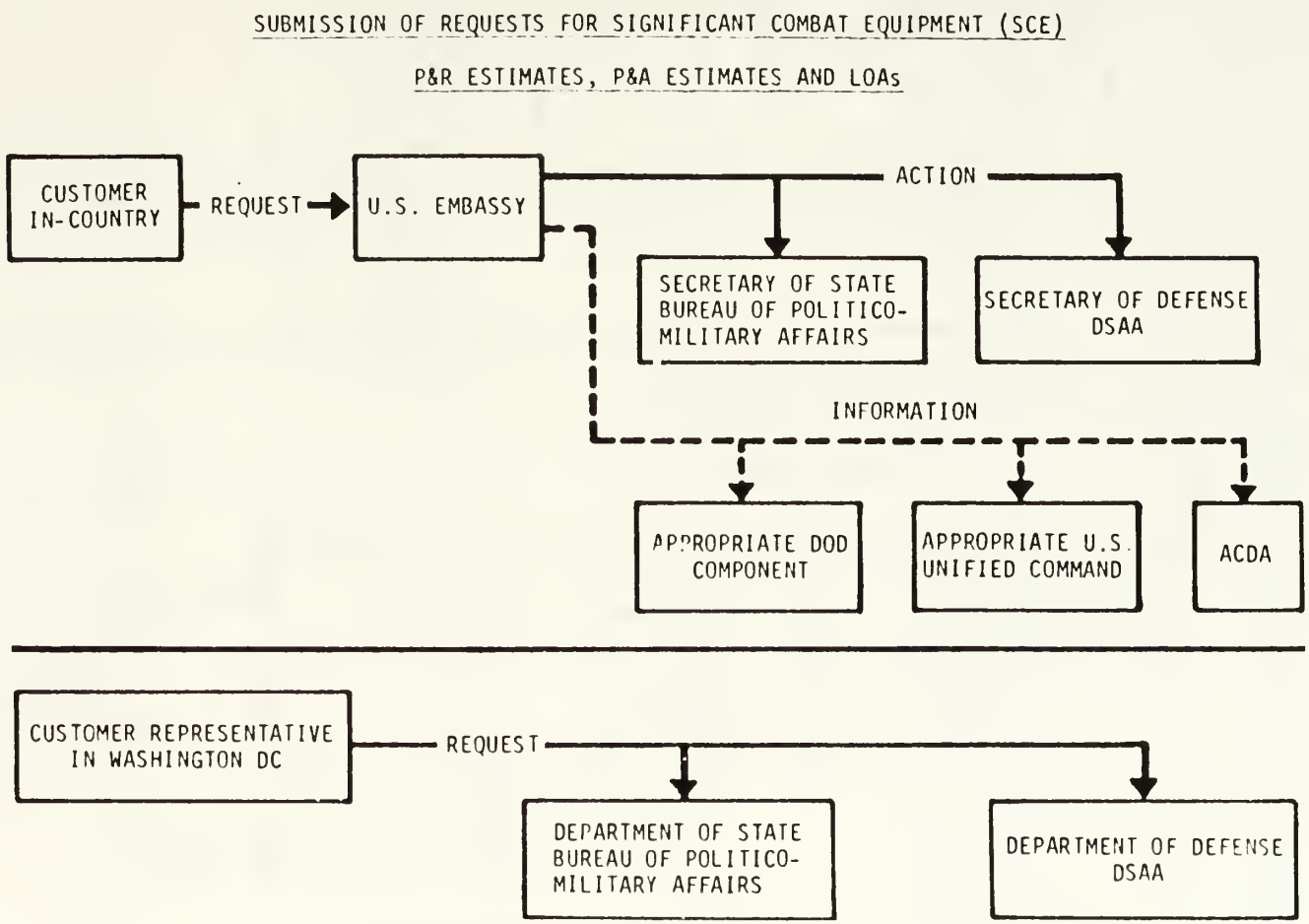

Figure 4-3. Requests for Significant Combat Equipment (SCE)

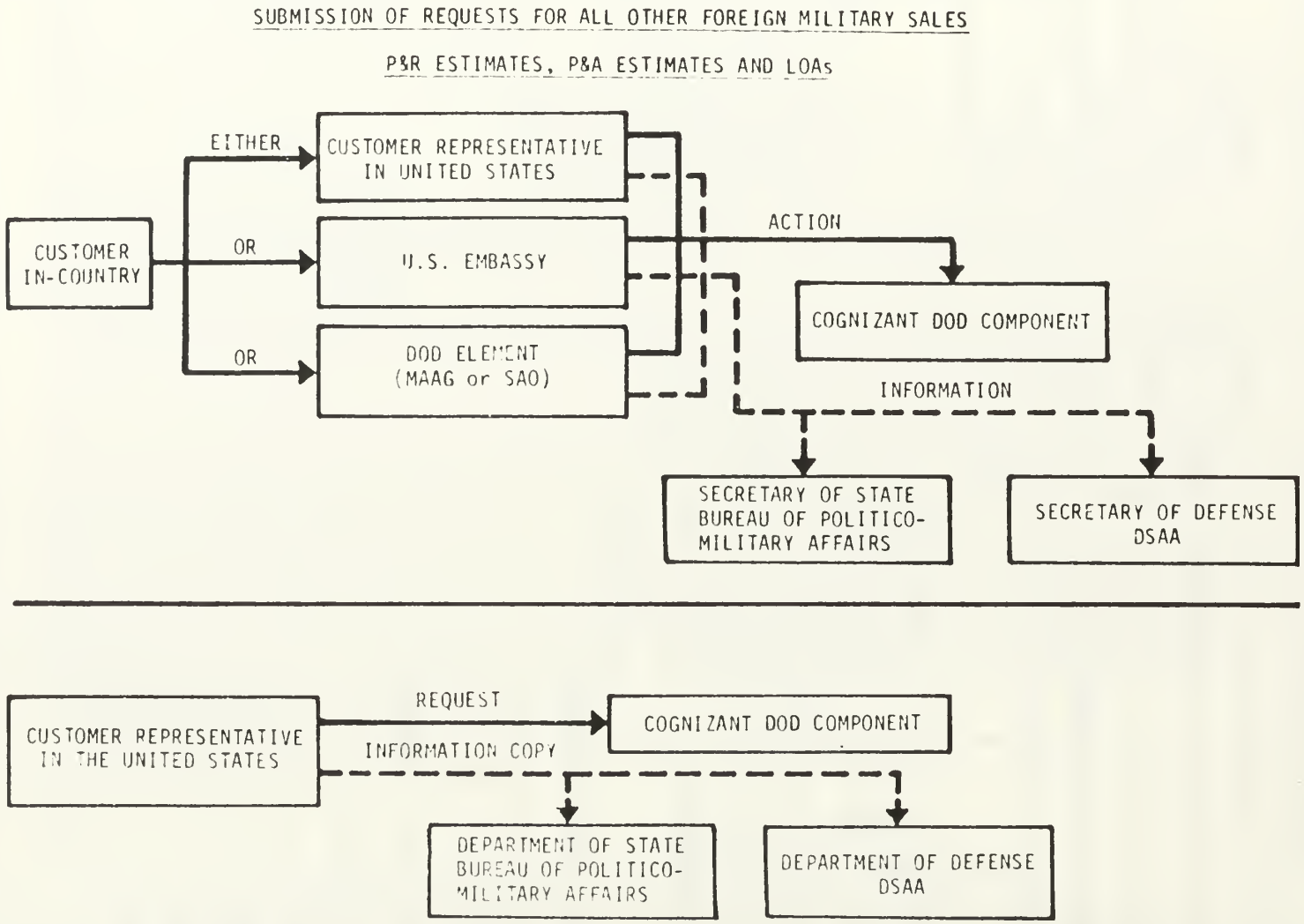

Figure 4-4. Request for Other Foreign Military Sales

UNITED STATES DEPARTMENT OF DEFENSE
OFFER AND ACCEPTANCE

(1) PURCHASER *(Name and Address) (Zip Code)*

(2) PURCHASER'S REFERENCE | (3) CASE IDENTIFIER

OFFER

Pursuant to the Arms Export Control Act, the Government of the United States (USG) hereby offers to sell to the above purchaser the defense articles and defense services listed below (hereinafter referred to collectively as "items" and individually as "defense articles" or "defense services"), subject to the terms contained herein and conditions set forth in Annex A, and to such other special terms and conditions which may be a part of and appended to, this Offer and Acceptance.

(4) _____
Signature *(US Dept/Agency Authorized Representative)*

(5) _____
Typed Name and Title

(6) ADDRESS _____

(7) DATE _____

(8) THIS OFFER EXPIRES _____

(9) _____
Countersignature *(Office of the Comptroller, DSAA)* *(Date)*

(10) _____
Typed Name and Title

(11) DSAA ACCOUNTING ACTIVITY _____

NOTE: This offer must be accepted not later than the date shown in block 8. Within five (5) days of its acceptance, you must notify the Office of the Comptroller, DSAA. Otherwise, this offer is cancelled and retention of initial deposit by offeror pending disposition instructions shall not be deemed a waiver of such cancellation. Request prompt notification if this offer is rejected.

ITEM OR REF NO (12)	ITEM DESCRIPTION (Including Stock Number, if applicable) (13)	QUANTITY (14)	UNIT OF ISSUE (15)	ESTIMATED UNIT COST (16)	ESTIMATED TOTAL COST (17)	AVAILABILITY AND REMARKS (18)	OFFER RELEASE CODE (19)	DELIVERY TERM CODE (20)

(21) ESTIMATED COST	$
(22) ESTIMATED PACKING, CRATING, AND HANDLING COST	$
(23) ESTIMATED GENERAL ADMINISTRATIVE COSTS	$
(24) ESTIMATED CHARGES FOR SUPPLY SUPPORT ARRANGEMENT	$
(25) OTHER ESTIMATED COSTS *(Specify)*	$
(26) ESTIMATED TOTAL COSTS	$

(27) TERMS

(28) AMOUNT OF INITIAL DEPOSIT – $

ACCEPTANCE

(29) I am a duly authorized representative of the Government of _____ _____ and upon behalf of said Government, accept this offer under the terms and conditions contained herein (30) this _____ day of _____ 19 ____

(31) _____
SIGNATURE

(32) _____
TYPED NAME AND TITLE

(33) MARK FOR CODE _____

(34) FREIGHT FORWARDER CODE _____

(35) PROCURING AGENCY _____

(36) DESIGNATED PAYING OFFICE _____

(37) ADDRESS OF DESIGNATED PAYING OFFICE _____

DD FORM 1 MAR 79 1513 — PREVIOUS EDITIONS MAY BE USED UNTIL EXHAUSTED — PAGE 1 of PAGES

Figure 4-5. DD Form 1513 Letter of Offer and Acceptance (LOA)

GENERAL CONDITIONS

A THE GOVERNMENT OF THE UNITED STATES

1 Agrees to furnish such items from its Department of Defense (hereinafter referred to as "DOD") stocks and resources, or to procure them under terms and conditions consistent with DOD regulations and procedures. When procuring for the Purchaser, the DOD shall, in general, employ the same contract clauses, the same contract administration, and the same inspection procedures as would be used in procuring for itself except as otherwise requested by the Purchaser and as agreed to by the DOD. Unless the purchaser has requested that a sole source contractor be designated and this Letter of Offer and Acceptance reflects acceptance of such designation by the DOD, the Purchaser understands that selection of the contractor source to fill this requirement is solely the responsibility of the Government of the United States (hereinafter referred to as "USG"). Further, the Purchaser agrees that the United States DoD is solely responsible for negotiating the terms and conditions of all contracts necessary to fulfill the requirements in the Letter of Offer.

2 Advises that when the DOD procures for itself, its contracts include warranty clauses only on an exceptional basis. However, the USG shall, with respect to items being procured, and upon timely notice, attempt to the extent possible to obtain any particular or special contract provisions and warranties desired by the Purchaser. The USG further agrees to exercise, upon the Purchaser's request, any rights (including those arising under any warranties) the USG may have under any contract connected with the procurement of any items. Any additional cost resulting from obtaining special contract provisions or warranties, or the exercise of rights under such provisions or warranties, or any other rights that the USG may have under any contract connected with the procurement of items, shall be charged to the Purchaser.

3 a Shall, unless the condition is otherwise specified in [illegible] repair or replace at no extra cost defense articles supplied from DOD stocks which are damaged or found to be defective in respect of material or workmanship when it is established that these deficiencies existed prior to passage of title, or found to be defective in design to such a degree that the items cannot be used at all for the purpose for which they were designed. Qualified representatives of the USG and of the Purchaser, upon notification pursuant to paragraph B.6 below, shall agree on the liability of the USG hereunder and the corrective steps to be taken.

b With respect to items being procured for sale to the Purchaser, the USG agrees to exercise warranties on behalf of the Purchaser pursuant to A.2 above to assure, to the extent provided by the warranty, replacement or correction of such items found to be defective.

c In addition, the USG warrants the title of all items sold to the Purchaser hereunder. The USG, however, makes no warranties other than those specifically set forth herein. In particular, the USG disclaims any liability resulting from patent infringement occasioned by the use or manufacture by or for the Purchaser outside the United States of items supplied hereunder.

4 Agrees to deliver and pass title to the items to the Purchaser at the initial point of shipment unless otherwise specified in this Offer and Acceptance. With respect to defense articles procured for sale to the Purchaser, this will normally be at the manufacturer's loading facilities; with respect to defense articles furnished from stocks, this will normally be at the U.S. depot. Articles will be packed, crated or otherwise prepared for shipment prior to the time title passes. If "Point of Delivery" is specified otherwise than the initial point of shipment, the supplying Military Department or Defense Agency will arrange movement of the items to the authorized delivery point as reimbursable service but will pass title at the initial point of shipment. The USG disclaims any liability for damage or loss to the items incurred after passage of title irrespective of whether transportation is by common carrier or by the U.S. Defense Transportation System.

5 Advises that: a Unless otherwise specified, USG standard items will be furnished without regard to make or model.

b The price of items to be procured shall be at their total cost to the USG. Unless otherwise specified, the cost estimates of items to be procured, availability determination, payment schedule, and delivery projections quoted are estimates based on current available data. The USG will use its best efforts to advise the Purchaser or its authorized representatives by DD Form 1513-2:

(1) of any potential [illegible] increase that might result in an increase in the "Estimated Total Cost" in excess of 10 percent;

(2) of any changes in the payment schedule(s); and

(3) of any delays which might significantly affect the estimated delivery dates,

but its failure to so advise of the above shall not affect the Purchaser's obligation under paragraphs B.1 and B.7 below.

c The USG will, however, use its best efforts to deliver items or render services for the amount and at the times quoted.

6 Under unusual and compelling circumstances when the national interest of the United States so requires, the USG reserves the right to cancel or suspend all or part of this Offer and Acceptance at any time prior to the delivery of defense articles or performance of services (including training). The USG shall be responsible for all termination costs of its suppliers resulting from cancellations or suspensions under this paragraph.

7 Shall refund to the Purchaser any payments received hereunder which prove to be in excess of the final total cost of delivery and performance of this Offer and Acceptance [illegible] not required to cover arrearages on other open Offers and Acceptances of the Purchaser.

8 Advises that personnel performing defense services provided under this Offer and Acceptance will not perform any duties of a combatant nature, including any duties relating to training, advising, or otherwise providing assistance regarding combat activities, outside the United States in connection with the performance of these defense services.

9 Advises that in the assignment or employment of United States personnel for the performance of this Offer and Acceptance, the USG will not take into account race, religion, national origin, or sex.

10 Advises that notwithstanding the Purchaser's agreement to pay interest on any net amount by which Purchaser may be in arrears on payments (provided for in paragraph B.8 below), USG funds will not be used for disbursements by DOD to its contractors in the event of any such arrears of payments. Accordingly, failure by the Purchaser to make timely payments in the amounts due may result in delays in contract performance by DOD's contractors, claims by contractors for increased costs (including the above mentioned interest costs), claims by contractors for termination liability for breach of contract or termination of contracts by the USG under this or other open Offers and Acceptances of the Purchaser at Purchaser's expense.

B THE PURCHASER

1 Shall pay to the USG the total cost to the USG of the items even if the final total cost exceeds the amounts estimated in this Offer and Acceptance.

2 Shall make payment(s) for the items by check(s) or by wire transfer payable in United States dollars to the Treasurer of the United States.

3 a Shall, if "Terms" specify "cash with acceptance", forward with this Offer and Acceptance a check or wire transfer in the full amount shown as the estimated total cost, and agrees to make such additional payment(s) as may be specified upon notification of cost increase(s) and request(s) for funds to cover such increase.

b Agrees, if "Terms" specify payment to be "cash prior to delivery", to pay to the USG such amounts at such times as may be specified from time to time by the USG (including an initial deposit set forth under "Terms") in order to meet payment requirements for articles or services to be furnished from the resources of the U.S. Department of Defense. USG requests for funds may be based on estimated requirements to cover forecasted deliveries of articles or costs to provide defense services. It is USG policy to obtain funds 90 days in advance of the time DOD plans such deliveries or incurs such expenses on behalf of the Purchaser.

c Agrees, if "Terms" specify payment by "dependable undertaking", to pay to the USG such amounts at such times as may be specified from time to time by the USG (including any initial deposit set forth under "Terms") in order to meet payments required by contracts under which items are being procured, and any damages and costs that may accrue or have accrued from termination of contracts by the USG because of Purchaser's cancellation of this Offer and Acceptance under paragraph B.7 hereof. USG requests for funds may be based upon estimated requirements for advance and progress payments to suppliers, estimated termination liability, delivery forecasts, or evidence of constructive delivery, as the case may be. It is USG policy to obtain such funds 90 days in advance of the time USG makes payments on behalf of the Purchaser.

d Agrees, if "Terms" specify "payment on delivery", that bills may be dated as of the date(s) of delivery of the defense articles or rendition of the defense services, or upon forecasts of the date(s) thereof.

e Agrees, if "Terms" specify payment under a Credit Agreement between the Purchaser and DOD, to pay to the USG on a "dependable undertaking" basis, in accordance with B.3.c above, such costs as may be in excess of the amount funded by the Credit Agreement.

f Agrees that requests for funds or billings under paragraphs B.3.a through e above are due and payable in full on presentation or, if a payment date is specified in the request for funds or bill, on the payment date so specified, even if such payment date is not in accord with the estimated payment schedule, if any, contained in this Offer and Acceptance. Without affecting Purchaser's obligation to make such payment(s) when due, documentation concerning advance and progress payments, estimated termination liability, or evidence of constructive delivery or shipment in support of request for funds or bills will be made available to the Purchaser by DOD upon request. When appropriate, Purchaser will request adjustment of any questioned billed items by subsequent submission of required discrepancy reports in accordance with paragraph B.6 below.

g Agrees to pay interest on any net amount by which it is in arrears on payments, determined by considering collectively all of the Purchaser's open Offers and Acceptances with the DOD. Interest shall be calculated on a daily basis. The principal amount of the arrearage shall be computed as the excess of cumulative financial requirements of the Purchaser over total cumulative payments after quarterly billing payment due dates. The rate of interest paid shall be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the USG as of the last day of the month preceding the net arrearage and shall be computed from the date of net arrearage.

Figure 4-6a. General Conditions of Annex A

4. Shall furnish shipping instructions for the items with its acceptance of this Offer and Acceptance. Such instructions shall include (a) Offer/Release Code, (b) Freight Forwarder Code, and (c) the Mark for Code, as applicable.

5. Shall be responsible for obtaining the appropriate insurance coverage and customs clearances, and, except for items exported by the USG, appropriate export licenses.

6. Shall accept title to the defense articles at the initial point of shipment (see A.4. above). Purchaser shall be responsible for in-transit accounting and settlement of claims against common carriers. Title to defense articles transported by parcel post shall pass to the Purchaser on date of parcel post shipment. Standard Form 364 shall be used in submitting claims to the USG for overage, shortage, damage, duplicate billing, item deficiency, improper identification or improper documentation and shall be submitted by Purchaser promptly. Claims of $100.00 or less will not be reported for overages, shortages or damages. Claims received after one year from date of passage of title or billing, whichever is later, will be disallowed by the USG, unless the USG determines that unusual and compelling circumstances involving latent defects justify consideration of the claim.

7. May cancel this Offer and Acceptance with respect to any or all of the items listed in this Offer and Acceptance at any time prior to the delivery of defense articles or performance of services (including training). It shall be responsible for all costs resulting from cancellation under this paragraph.

8. Shall, except as may otherwise be mutually agreed in writing, use the items sold hereunder only:

a. For the purposes specified in the Mutual Defense Assistance Agreement, if any, between the USG and the Purchaser;

b. For the purposes specified in any bilateral or regional defense treaty to which the USG and the Purchaser are both parties, if subparagraph a. of this paragraph is inapplicable; or

c. For internal security, individual self-defense, and/or civic action, if subparagraphs a. and b. of this paragraph are inapplicable.

9. Shall not transfer title to, or possession of, the defense articles, components and associated support material, related training or other defense services (excluding any plans, specifications or information) furnished under this Offer and Acceptance to anyone not an officer, employee or agent of the Purchaser (excluding transportation agencies) and shall not use or permit their use for purposes other than those authorized by B.8. above, unless the written consent of the USG has first been obtained. To the extent that any items, plans, specifications, or information furnished in connection with this Offer and Acceptance may be classified by the USG for security purposes, the Purchaser shall maintain a similar classification and employ all measures necessary to preserve such security, equivalent to those employed by the USG, throughout the period during which the USG may maintain such classification. The USG will use its best efforts to notify the Purchaser if the classification is changed. The Purchaser will ensure, by all means available to it, respect for proprietary rights in any defense article and any plans, specifications, or information furnished, whether patented or not.

C. INDEMNIFICATION AND ASSUMPTION OF RISKS

1. It is understood by the Purchaser that the USG in procuring and furnishing the items specified in this Offer and Acceptance does so on a nonprofit basis for the benefit of the Purchaser. The Purchaser therefore undertakes, subject to A.3. above, to indemnify and hold the USG, its agents, officers, and employees harmless from any and all loss or liability (whether in tort or in contract) which might arise in connection with this Offer and Acceptance because of: (a) injury to or death of personnel of Purchaser or third parties; (b) damage to or destruction of (A) property of the DOD furnished to Purchaser or suppliers specifically to implement this Offer and Acceptance, (B) property of Purchaser (including the items ordered by Purchaser pursuant to this Offer and Acceptance, before or after passage of title to Purchaser); or (C) property of third parties; or (c) patent infringement.

2. Subject to any express special contractual warranties obtained for the Purchaser in accordance with A.2. above, the Purchaser agrees to relieve the contractors and subcontractors of the USG from liability for, and will assume the risk of, loss or damage to: (a) Purchaser's property (including the items procured pursuant to this Offer and Acceptance before or after passage of title to Purchaser) and (b) property of the DOD furnished to suppliers specifically to implement this Offer and Acceptance, to the same extent that USG would assume for its property if it were procuring for itself the item or items procured pursuant to this Offer and Acceptance.

D. ACCEPTANCE

1. To accept this Offer and Acceptance, the Purchaser will not later than the expiration date of the Offer and Acceptance, as set forth herein, return three copies properly signed to the security assistance accounting center designated herein, accompanied by such initial deposit or other payment as may be required by the Terms herein. In addition, Purchaser will concurrently return three copies properly signed to the U.S. Military Department or Defense Agency making the offer. When properly accepted and returned as specified herein, the provisions of this Offer and Acceptance shall be binding upon the USG and the Purchaser.

2. It is understood that implementation of the Offer and Acceptance cannot proceed without a proper acceptance. Failure to comply with Terms and Conditions required for acceptance, as, for example, delay in submission of any required initial deposit or payment of full estimated cost, as the case may be, may require revision or cancel of the Offer and Acceptance.

3. Unless a written request for extension is made by the Purchaser and granted in writing by an authorized representative of the appropriate U.S. Military Department or Defense Agency, this Offer and Acceptance shall terminate on the expiration date set forth herein.

E. ENCLOSURES

Enclosures attached hereto are, by this reference, incorporated herein and are made a part hereof as though set forth in full.

F. PUBLIC INSPECTION

This Offer and Acceptance will be made available for public inspection to the fullest extent possible consistent with the national security of the United States.

EXPLANATORY NOTES

1. The item or reference numbers appearing in the "ITEM OR REF. NO." column may not correspond with references used in Purchasers' original request. However, this number, together with the case identifier shown, should always be used as a reference in future correspondence.

2. Availability (leadtime quoted in the estimated number of months required for complete delivery of the item(s) in accordance with the terms of delivery after receipt of acceptance of this Offer pursuant to Section D. of the Conditions, and the conclusion of appropriate financial arrangements. Phased deliveries are shown by quantity and leadtime for each increment, where applicable. Items for which delivery leadtime is not shown are noted in column headed "Item Description" as items to be installed in the applicable end item prior to shipment.

3. The planned source of supply for each item is expressed in the following codes:

S	(*)	Service Stocks
P	(*)	Procurement
R	(*)	Rebuild/Repair/Modification
X	(*)	Stock and procurement, e.g., initial repair parts
F	(*)	"Mines" major items in long supply or excess

*Availability is stated in months.

4. Condition of the defense articles shown in the "AVAILABILITY AND REMARKS" column is expressed in the following codes:

AI	-	Items to be provided in existing condition without repair, restoration or rehabilitation which may be required. Condition indicated in item description.
M	-	Articles of mixed condition (new, reworked and rehabilitated) may be commingled when issued. Example: repair parts, ammunition, set assemblies, kits, tool sets and shop sets.
N	-	Serviceable defense articles.
O	-	Obsolete or non-standard item in an "AS IS" condition for which repair parts support may not be available from DOD.
S	-	Substitute. Suitable substitutions may be shipped for unavailable defense articles unless otherwise advised by the Purchaser.
U	-	Reworked or rehabilitated defense articles possessing original appearance insofar as practicable, including all Modification Work Orders and Engineering Change Orders as applied to such defense articles when issued but defense articles cannot not be considered as having had total replacement of worn parts and/or assemblies. Only parts and components not meeting US Armed Forces serviceability tolerances and standards will have been replaced; in all instances such defense articles will meet US Armed Forces standards of serviceability.

5. Training notes:

AP	-	Annual Training Program.
SP	-	Special Training designed to support purchases of US equipment.
NC	-	This offer does not constitute a commitment to provide US training.
SC	-	US Training concurrently being addressed in separate Offer and Acceptance.
NR	-	No US training is required in support of this purchase.

6. For meaning of delivery codes, see Military Assistance Program Address Directory (MAPAD).

7. The use of Offer/Release Codes "Y" and "Z" will incur a surcharge fee of .125% per month for shipment delays in excess of 15 days.

Figure 4-6b. General Conditions of Annex A

3. DD Form 1513-1 - Amendment to LOA

Circumstances frequently require that change be made to an executed DD Form 1513. There are times when U.S. interests are best served by processing amendments to cover small changes in scope, since administrative reasons sometimes preclude the preparation of new LOA's, or make it difficult and costly to do so. The Amendment to a LOA, DD Form 1513-1 (See Figure 4-7), should be used to meet only minimum essential administrative needs. The amendment may be used for minor changes in scope, when such use of the form is essential for administrative reasons.

All changes in the scope of an existing Letter of Offer should be treated as a new FMS case unless the changes are minor and would for administrative reasons be more effectively handled as an amendment. When a new case is prepared on the basic DD Form 1513, a cross-reference to the previous FMS case may be made on LOAs issued due to an increase in scope.

Major changes in the scope of an existing LOA require the preparation of a new FMS case on the basic DD Form 1513 unless approval has been obtained from DSAA to utilize the DD Form 1513-1. However, should changes in scope occur in the same fiscal year as that in which the original LOA was accepted by the purchaser and such amendment would also be accepted in the same fiscal year, use of the DD Form 1513-1 is permitted. All amendments which reflect an increase in excess of $50,000 should be coordinated with the Director, DSAA Operations.

4. DD Form 1513-2 - Notice of Modification of LOA

The DD Form 1513-1 should be used only if the revision requires purchaser acceptance before implementation. If the revision is a unilateral change on the part of the United States Government to the terms and conditions of the LOA which does not require purchaser acceptance, Notice of Modification of LOA, the DD Form 1513-2 (See Figure 4-8), should be provided to the purchaser.

DD Form 1513-2 is utilized to record modifications to an existing LOA, e.g., decreases in scope, and changes not affecting the scope of an LOA. All terms and conditions of an existing DD Form 1513 and any related amendments thereto not specifically noted as being modified by the DD Form 1513-2 remain unchanged and in effect. If there is any doubt as to whether to use the DD Form 1513, DD Form 1513-1, or the DD Form 1513-2 in a particular case it should be referred to DSAA Operations for determination.

5. Letter of Intent (LOI)

Another agreement that is used is the LOI. There are two formats for LOIs The DD Form 2012 (See figure 4-9), used to finance procurement of long lead time items prior to the issuance of an LOA; and the DD Form 2012-1 (See Figure 4-10), used to finance procurement of long lead time items during the period between issuance of an LOA and acceptance by the purchasing country or international organizations.

As both forms contemplate a specified dollar limitation upon the liability of the purchaser for the procurement of long lead time items, in order to comply with the requirements of the Arms Export Control Act, it is necessary that all cost-reimbursement contracts awarded to implement a LOI (procurement as well as

UNITED STATES DEPARTMENT OF DEFENSE
AMENDMENT TO OFFER AND ACCEPTANCE

(1) PURCHASER *(Name and Address) (Zip Code)*

(2) PURCHASER'S REFERENCE | (3) AMD'T NO | (4) CASE IDENTIFIER

OFFER TO AMEND

Pursuant to the Arms Export Control Act the Government of the United States (USG) hereby offers to amend the above case for the purchase of defense articles and defense services subject to all other terms and conditions of the original case remaining unchanged

(5) _____
Signature *(US Dept /Agency Authorized Representative)*

(6) _____
Typed Name and Title

(7) ADDRESS

(8) DATE

(9) THIS OFFER TO AMEND EXPIRES

(10) _____
Countersignature *(Office of the Comptroller, DSAA)* *(Date)*

(11) _____
Typed Name and Title

NOTE This Amendment to Offer must be accepted not later than the date shown in block 9. Within five (5) days of its acceptance, you must so notify the Office of the Comptroller, DSAA. Otherwise, this Amendment to Offer is cancelled and retention of initial deposit by offeror pending disposition instructions shall not be deemed a waiver of such cancellation. Request prompt notification if this offer is rejected.

(12) DESCRIPTION AND REASON(S) FOR AMENDMENT

ITEM OR REF NO (13)	ITEM DESCRIPTION *(Including Stock Number if applicable)* (14)	QUANTITY (15)	UNIT OF ISSUE (16)	ESTIMATED UNIT COST (17)	ESTIMATED TOTAL COST (18)	AVAILABILITY AND REMARKS (19)	OFFER RELEASE CODE (20)	DELIVERY TERM CODE (21)

	(a) PREVIOUS COST	(b) AMENDED COST
(22) ESTIMATED COST	$	$
(23) ESTIMATED PACKING CRATING AND HANDLING COSTS	$	$
(24) ESTIMATED GENERAL ADMINISTRATIVE COSTS	$	$
(25) ESTIMATED CHARGES FOR SUPPLY SUPPORT ARRANGEMENT	$	$
(26) OTHER ESTIMATED COSTS *(Specify)*	$	$
(27) ESTIMATED TOTAL COSTS	$	$

(28) TERMS

ACCEPTANCE OF AMENDMENT

(29) I am a duly authorized representative of the Government of _____ and upon behalf of said Government accept this offer to amend under the terms and conditions contained herein (30) this _____ day of _____ 19____

(31) TYPED NAME AND TITLE | (32) SIGNATURE

DD FORM 1 MAR 79 1513-1 PREVIOUS EDITIONS MAY BE USED UNTIL EXHAUSTED PAGE 1 OF PAGES

Figure 4-7. DD Form 1513-1 Amendment to LOA

UNITED STATES DEPARTMENT OF DEFENSE
NOTICE OF MODIFICATION OF OFFER AND ACCEPTANCE

(1) PURCHASER *(Name and Address) (ZIP Code)*

(2) PURCHASER'S REFERENCE	(3) NOTICE NO	(4) CASE IDENTIFIER

NOTICE OF MODIFICATION

Pursuant to the Arms Export Control Act, the Government of the United States (TSG) hereby notifies the purchaser of modification of the above designated case. All other terms and conditions of the original case remain unchanged.

(5)	(5)
SIGNATURE *(US Dept / Agency Authorized Representative)*	COUNTERSIGNATURE *(Office of the Comptroller, DSAA/Date)*
(6)	(10)
Typed Name and Title	Typed Name and Title
(7) ADDRESS	
(8) DATE	

(11) DESCRIPTION OF AND REASON(s) FOR MODIFICATION

ITEM OR REF NO (12)	ITEM DESCRIPTION *(Including Stock Number, if applicable)* (13)	QUANTITY (14)	UNIT OF ISSUE (15)	ESTIMATED UNIT COST (16)	ESTIMATED TOTAL COST (17)	AVAILABILITY AND REMARKS (18)

RECAPITULATION OF TOTAL DD FORM 1513 *(Or 1513-1)*	*(a)* PREVIOUS COST	*(b)* REVISED COST
(19) ESTIMATED COST	$	$
(20) ESTIMATED PACKING, CRATING AND HANDLING COSTS	$	$
(21) ESTIMATED GENERAL ADMINISTRATIVE COSTS	$	$
(22) ESTIMATED CHARGES FOR SUPPLY SUPPORT ARRANGEMENT	$	$
(23) OTHER ESTIMATED COSTS *(Specify)*	$	$
(24) ESTIMATED TOTAL COSTS	$	$

ACKNOWLEDGEMENT OF RECEIPT

(25) I am a duly authorized representative of the Government of _____ and upon behalf of said Government acknowledge receipt of the notice of modification (26) this _____ day of _____ 19_____

(27) TYPED NAME AND TITLE	(28) SIGNATURE

DD FORM 1 MAR 79 **1513-2** PREVIOUS EDITIONS MAY BE USED UNTIL EXHAUSTED PAGE 1 OF PAGES

Figure 4-8. DD Form 1513-2 Notice of Modification LOA

UNITED STATES DEPARTMENT OF DEFENSE LETTER OF INTENT	PURCHASER *(Name and address)*

_____ _____
(Purchaser's Reference) *(Case Identifier)*

The Government of _____ _____ acting through its Ministry of Defense *(hereinafter referred to as the "Purchaser")* hereby declares its firm intent to procure, under United States Arms Export Control Act *(AECA)* procedures, from the Government of the United States, the following defense articles and defense services.

1. It is understood that the United States Department of the _____ plans to present to the Purchaser a Letter of Offer and Acceptance *(DD Form 1513)* within _____ days after signature of this Letter of Intent. Purchaser intends to sign said Letter of Offer and Acceptance not later than _____ _____ days after receipt. Except to the extent directly inconsistent with the provisions hereof, the terms and conditions set forth on Annex A of DD Form 1513 will apply to all activities undertaken pursuant to this Letter of Intent, and the estimated costs of such activities will be included in the Letter of Offer and Acceptance. In particular, Conditions B.8, B.9, and C on Annex A of DD Form 1513 are hereby incorporated by reference and made an integral part of this Letter of Intent. This Letter of Intent shall be superseded upon Purchaser's signature of the Letter of Offer and Acceptance.

2. In anticipation of the Purchaser's signature of the above-mentioned Letter of Offer and Acceptance the Purchaser commits his Government to the following.

(a) In order to permit the United States Government to proceed immediately with the purchase of long lead time items and to cover associated administrative expenses, the United States Department of the _____ is herewith authorized to incur obligations and expend up to the sum of $_____ *(which includes all estimated termination costs)* on an FMS dependable undertaking basis, to be exceeded only in the event of a decision by either a Court or Board which increases the contractor's entitlement.

(b) The Purchaser agrees to pay the full amount of such authorized obligations and to make funds available in such amounts and at such times as may be requested by the United States Government for expenditures against such obligations.

(c) It is estimated that the cost of the long lead time items, associated administrative expenses and estimated termination costs will not exceed the amount set forth in subparagraph (a) of this paragraph. However, if at any time prior to Purchaser's signature of the above-mentioned Letter of Offer and Acceptance, the United States Department of the _____ has reason to believe that the costs which it expects to incur in the performance of this Letter of Intent will exceed the amount set forth in subparagraph (a) of this paragraph, it shall promptly notify the Purchaser in writing to that effect. The notice shall state the estimated amount of and the date by which

DD FORM 1 MAR 79 2012 12-18 EDITION OF 1 FEB 76 IS OBSOLETE

Figure 4-9a. DD Form 2012 Letter Of Intent (LOI)

the additional obligational authority *(by a new or modified Letter of Intent)* will be required from the Purchaser in order to continue performance under this Letter of Intent. If, after such notification, the additional obligational authority is not granted by the date set forth in the notification, the United States Government is authorized, in its discretion, to terminate any and all activities under this Letter of Intent at Purchaser's expense, in accordance with subparagraph (b) above, in an amount not to exceed the amount set forth in subparagraph (a) of this paragraph.

3. This Letter of Intent does not prejudice the Purchaser's decision on the acceptance of the Letter of Offer. Moreover, the Purchaser may cancel all or any part of this Letter of Intent at any time by notifying the United States Government. Upon receipt of such notification the United States Government is authorized to terminate any and all activities initiated hereunder, at Purchaser's expense, in accordance with paragraph 2(b), in an amount not to exceed the amount set forth in paragraph 2(a).

4. In the event of such cancellation or termination, the United States Government will use its best efforts to minimize any termination costs.

5. Certain items for which procurements may be initiated hereunder are normally the subject of definitization or provisioning conferences, at which specific items and quantities are agreed upon. If it is necessary to place any such items on order prior to any such conference, the United States Department of the _____ is authorized to do so, using its best judgment, and will furnish a list of the items so ordered at the conference.

Dated _____

_____
(Typed Name and Title)

Accepted this _____day of _____, 19_____.

_____

U.S. Department of the _____

Figure 4-9b. DD Form 2012 Letter of Intent (LOI)

UNITED STATES DEPARTMENT OF DEFENSE LETTER OF INTENT	PURCHASER *(Name and address)*

_____ _____

(Purchaser's Reference) *(Case Identifier)*

The Government of _____ acting through its Ministry of Defense *(hereinafter referred to as the "Purchaser")* hereby declares its firm intent to procure, under United States Arms Export Control Act *(AECA)* procedures, from the Government of the United States, the following defense articles and defense services.

1. A Letter of Offer and Acceptance *(DD Form 1513)* for such defense articles and defense services was issued to the Purchaser by the United States Department of the _____ on _____, 19 ____. Purchaser intends to sign said Letter of Offer and Acceptance not later than _____ days after receipt. Except to the extent directly inconsistent with the provisions hereof, the terms and conditions set forth on Annex A of DD Form 1513 will apply to all activities undertaken pursuant to this Letter of Intent, the estimated costs of which activities have been included in the Letter of Offer and Acceptance. In particular, Conditions B.8, B.9, and C on Annex A of DD Form 1513 are hereby incorporated by reference and made an integral part of this Letter of Intent. This Letter of Intent shall be superseded upon Purchaser's signature of the Letter of Offer and Acceptance.

2. In anticipation of the Purchaser's signature of the above-mentioned Letter of Offer and Acceptance the Purchaser commits his Government to the following:

(a) In order to permit the United States Government to proceed immediately with the purchase of long lead time items and to cover associated administrative expenses, the United States Department of the _____ is herewith authorized to incur obligations and expend up to the sum of $ _____ *(which includes all estimated termination costs)* on an FMS dependable undertaking basis, to be exceeded only in the event of a decision by either a Court or Board which increases the contractor's entitlement.

(b) The Purchaser agrees to pay the full amount of such authorized obligations and to make funds available in such amounts and at such times as may be requested by the United States Government for expenditures against such obligations.

(c) It is estimated that the cost of the long lead time items, associated administrative expenses and estimated termination costs will not exceed the amount set forth in subparagraph (a) of this paragraph. However, if at any time prior to Purchaser's signature of the above-mentioned Letter of Offer and Acceptance, the United States Department of the _____ has reason to believe that the costs which it expects to incur in the performance of this Letter of Intent will exceed the amount set forth in subparagraph (a) of this paragraph, it shall promptly notify the Purchaser in writing to that effect. The notice shall state the estimated amount of and the date by which the additional obligational authority *(by a new or modified Letter of Intent)* will be required from the Purchaser in

12-20

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Figure 4-10a. DD Form 2012-1

order to continue performance under this Letter of Intent. If, after such notification, the additional obligational authority is not granted by the date set forth in the notification, the United States Government is authorized, in its discretion, to terminate any and all activities under this Letter of Intent at Purchaser's expense, in accordance with subparagraph (b) above, in an amount not to exceed the amount set forth in subparagraph (a) of this paragraph.

3. This Letter of Intent does not prejudice the Purchaser's decision on the acceptance of the Letter of Offer. Moreover, the Purchaser may cancel all or any part of this Letter of Intent at any time by notifying the United States Government. Upon receipt of such notification the United States Government is authorized to terminate any and all activities initiated hereunder, at Purchaser's expense, in accordance with paragraph 2(b), in an amount not to exceed the amount set forth in paragraph 2(a).

4. In the event of such cancellation or termination, the United States Government will use its best efforts to minimize any termination costs.

5. Certain items for which procurements may be initiated hereunder are normally the subject of definitization or provisioning conferences, at which specific items and quantities are agreed upon. If it is necessary to place any such items on order prior to any such conference, the United States Department of the _____ is authorized to do so, using its best judgment, and will furnish a list of the items so ordered at the conference.

Dated _____

_____
(Typed Name and Title)

Accepted this _____ day of _____, 19 _____.

_____

U.S. Department of the _____

Figure 4-10b. DD Form 2012-1

research and development) include a Limitation of Cost or Funds contract clause. That clause may be deleted by contract amendment after the purchaser's acceptance of the LOA.

DD Form 2012-2 (See Figure 4-11), Amendment to Letter of Intent, should be used for amending LOIs as provided for in paragraph 2(c) of DD Form 2012 and DD Form 2012-1. [Ref. 15:pp. 7-8 - 7-19]

D. THE COST OF FMS

The methodology employed in developing a FMS price depends upon whether that price is to be placed on a DD Form 1513 as a cost estimate or wether it is the price which is later reported in the billing system as the result of the constructive delivery of an article or service. The prices entered on a DD Form 1513 are estimates rather than firm commitments of the expected costs of articles and services to be delivered some time in the future. This point must be stressed throughout the planning, negotiation, and execution phases of a Foreign Military Sale case.

During discussion and negotiations, both countries should recognize the economic, production, and budget uncertainty that contribute to the difficulties in making accurate estimates on prices and availability. However, accurate projections of these costs in the DD Form 1513 are an important element in allowing the purchaser to forecast and budget its needs through its system of government. So, the DD Form 1513 is used to submit prices to the purchaser country unless a waiver is obtained from the Director, DSAA. Where an instrument other than a DD Form 1513 is used, the pricing or cost estimating breakdown should use the same elements of cost as found in the DD Form 1513. Where costs are calculated on the basis of a particular percentage, only that percentage will be used unless a deviation

SAMPLE DD Form 2012-2

UNITED STATES DEPARTMENT OF DEFENSE
AMENDMENT TO LETTER OF INTENT

_____

_____
(Date)

_____
_____
_____
_____

Dear Sirs:

Reference is made to the Letter of Intent between the Government of _____ and the United States Department of the _____, dated _____, identified by Case Designator _____. The Government of _____ desires to increase the amount set forth in paragraph 2(a) of said Letter of Intent and herewith authorizes the Department of the _____ to incur obligations and expend up to the sum of $_____ on FMS dependable undertaking basis for said Case.

_____
(Typed Name and Title)

Figure 4-11. DD Form 2012-2

is specifically granted by the Assistant Secretary of Defense (Comptroller). Requests for other exceptions to the pricing policies should also be submitted to the Assistant Secretary of Defense (Comptroller). While a percentage is used in computing prices, actual dollar figures are reflected on the DD Form 1513, not the Percentage.

The Arms Export Control Act (AECA), as amended, requires the United States Government to determine and recover all costs relating to FMS except where authority exists for reduction or waiver. The following elements must be considered when developing an FMS price

1. Cost of the item/service (purchase price, inventory value, etc.).
2. Accessorial Costs: For expenses of issuing and transferring material (if applicable). This is similar to a materiel handling charge and is generally added as a percentage factor.
3. Administrative Charge: For expenses of sales negotiation, procurement, accounting, budgeting, etc. (added as a percentage factor); applicable to all transactions.
4. Nonrecurring Research, Development, Test and Evaluation (RDT&E) and production costs: For DoD investment (if applicable); these are added on a pro-rata basis.
5. Asset Use Charge: For use of DoD facilities and equipment (if applicable); these are added as a percentage factor.
6. Contract administration costs: Costs that are directly related to FMS delivery from a production contract (added as a percentage factor).

The above elements of a FMS price can be combined into two major categories

1. The base price: Generally refers to the cost of the item or service, i.e., contract price, inventory price, replacement price, etc.
2. The authorized surcharge: On the other hand, relates to the application of a charge (often on a percentage or pro-rata basis) that is dependent to some degree on the value of a base price(s) or other pricing combinations.

E. THE FINANCING OF FMS

The financing of a Foreign Military Sale to an eligible country can be accomplished through cash financing or through some types of credit assistance utilizing the United States Government resources. The payment in all cases is stipulated in U.S. dollars.

The first and most common method of financing is cash payment. This method is used either by direct contract between foreign governments and the United States manufacturers or government-to-government sales under the Foreign Military Sales Program.

The following cash options can be considered for financing a Foreign Military Sale. These options include

1. Cash with Acceptance: This term applies when the initial case deposit equals the total amount of the case. Paragraph B.3.a. of Annex A to the LOA refers to the Purchaser's obligation under this term.
2. Cash Prior to Delivery: Under this term, the United States Government collects cash in advance of delivery of defense articles and rendering of defense services from DoD resources. Paragraph B.3.b. of Annex A to the LOA refers to the purchaser's obligation under this term.
3. Dependable Undertaking: Under this term, the United States Government collects cash in advance of procurement contract payment requirements. Paragraph B.3.c. of Annex A to the LOA refers to the purchaser's obligation under this term.
4. Payment on Delivery: Under this term, the United States Government issues bills to the purchaser at the time of delivery of defense articles or rendering of defense services from DoD resources. Paragraph B.3.d. of Annex A to the LOA refers to the purchaser's obligation under this term.
5. Loan Agreement (insert purchaser) (insert three digit loan agreement number), dated (insert date). This term applies to payment for a Foreign Military Sale in whole or in part with FMS loan funds, extended or guaranteed by DoD under section 23 or 24 of the Arms Export Control Act or under other legislation. Paragraph B.3.e. of Annex A to the LOA refers to the Purchaser's obligation under this term. The implementing agency will determine initial deposit requirements in the same manner as for cash sales.

There are also some types of government resources available to a foreign government for Foreign Military Sale. These are

1. DoD Guaranteed Loans: This kind of financing constitutes the major portion of the current FMS credit program. In this instance, DoD (DSAA) submits a guaranty (against all political and credit risks of nonpayment, including rescheduling actions or temporary defaults) to the Federal Financing Bank (FFB), who in turn is responsible for signing the loan agreement with the borrowing country.
2. DoD Direct Credit (or Loans): Historically, this type of financing has been used to assist those FMS countries in the process of economic development. The source of funding to finance this credit program is a fund appropriated by the Congress and is included in the annual appropriation. The credit agreement is between the borrowing country and DSAA.
3. Commercial Credit: FMS customer countries can negotiate financing for FMS purchases with commercial banks and lending institutions, if it so desires; however, it is seldom used because the interest rate charged is greater than that charged by the Federal Financing Bank, and additionally, such loans are not guaranteed by the DoD. [Ref. 17]

V. THE ROC PROCUREMENT SYSTEM

A. HISTORICAL BACKGROUND

With few exceptions the story of postwar United States military aid to countries in the Far East is a story of the United States' attempts to prevent the spread of Chinese Communism. After the end of World War II, American policy toward ROC during this period remained ambiguous until it was too late to prevent the Chinese Communist advances by military and economic assistance alone.

Shortly after the end of fighting of Second World War, President Truman assured the ROC that the United States would help modernize and strengthen Chinese armed forces "of moderate size". Part of this commitment was fulfilled by continuation of Lend Lease Program in support of 39 divisions and 8 1/3 air force groups. The total cost of the continued lend lease has been estimated to be $769 million.

When lend lease expired on June 30, 1946 the United States continued military assistance to ROC under a variety of legal authorizations and expedients. Naval assistance was furnished under a special law passed in 1946 which authorized the dispatch of a non-combatant naval mission, various types of technical assistance and the transfer of naval vessels. Ultimately, some 131 vessels with an acquisition cost of $141.3 million were transferred under this program. Although no special law was passed authorizing the action, the President Truman in February of 1946 authorized the Secretaries of War and Navy to establish a military advisory group in ROC. These were establish without a special agreement with the government of

ROC. In addition to this assistance the China Aid Act of 1948 resulted in a total of about $123 million of additional military aid to ROC.

In 1949 the Republic of China took its forces from the mainland of China to Taiwan and the offshore islands, the mainland of China eventually lost into Chinese Communist hands. With the Chinese Communists building their strength on the mainland, prospects for ROC's continued tenure on Taiwan did not look good. The United States did not wish to become involved and indicated this publicly. On January 5, 1950, President Truman stated that the United States had no intention of interfering militarily in the situation and that the United States would not provide military aid or advice to the ROC on Taiwan.

The attack in Korea quickly resulted in a reversal of United States policy. In late June of 1950 the President ordered the Seventh Fleet to prevent any attack on Taiwan. The policy of assisting the ROC in the defense of Taiwan has persisted to the December 31, 1979, the United States established diplomatic relations with the People's Republic of China and terminated the agreement of mutual defense. [Ref. 18:pp. 17-22]

Since Mutual Defense Treaty of 1954 the United States has been the guarantor of the security of ROC. Not surprisingly, ROC has been a major recipient of the United States security assistance, although that relationship has significantly changed with the normalization of relations between the United States and the People's Republic of China. Figure 5-1 provides a view of the types of military equipment provided ROC during the period 1950-1963. The figure shows that during this period 43 percent of all equipment provided ROC by the United States was combat equipment.

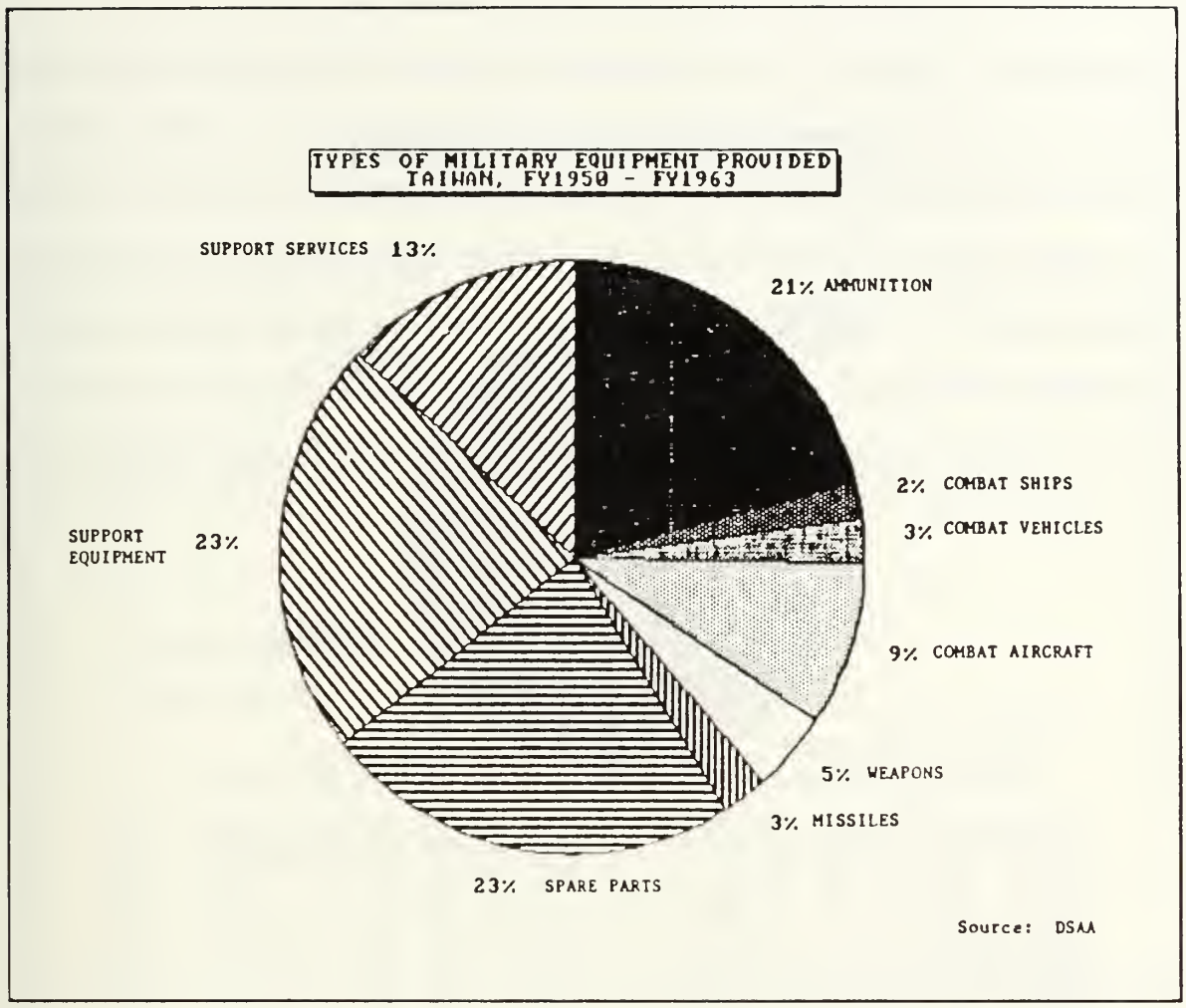

Figure 5-1. Military Equipment Provided Taiwan, FY1950-1963

As shown in Figure 5-2, during the period since 1963 spare parts from the United States accounted for the single largest category of ROC's military orders, equalling 46 percent, and support services accounted for an additional 17 percent. Agreements to purchase combat equipment declined to 25 percent of all orders during this period.

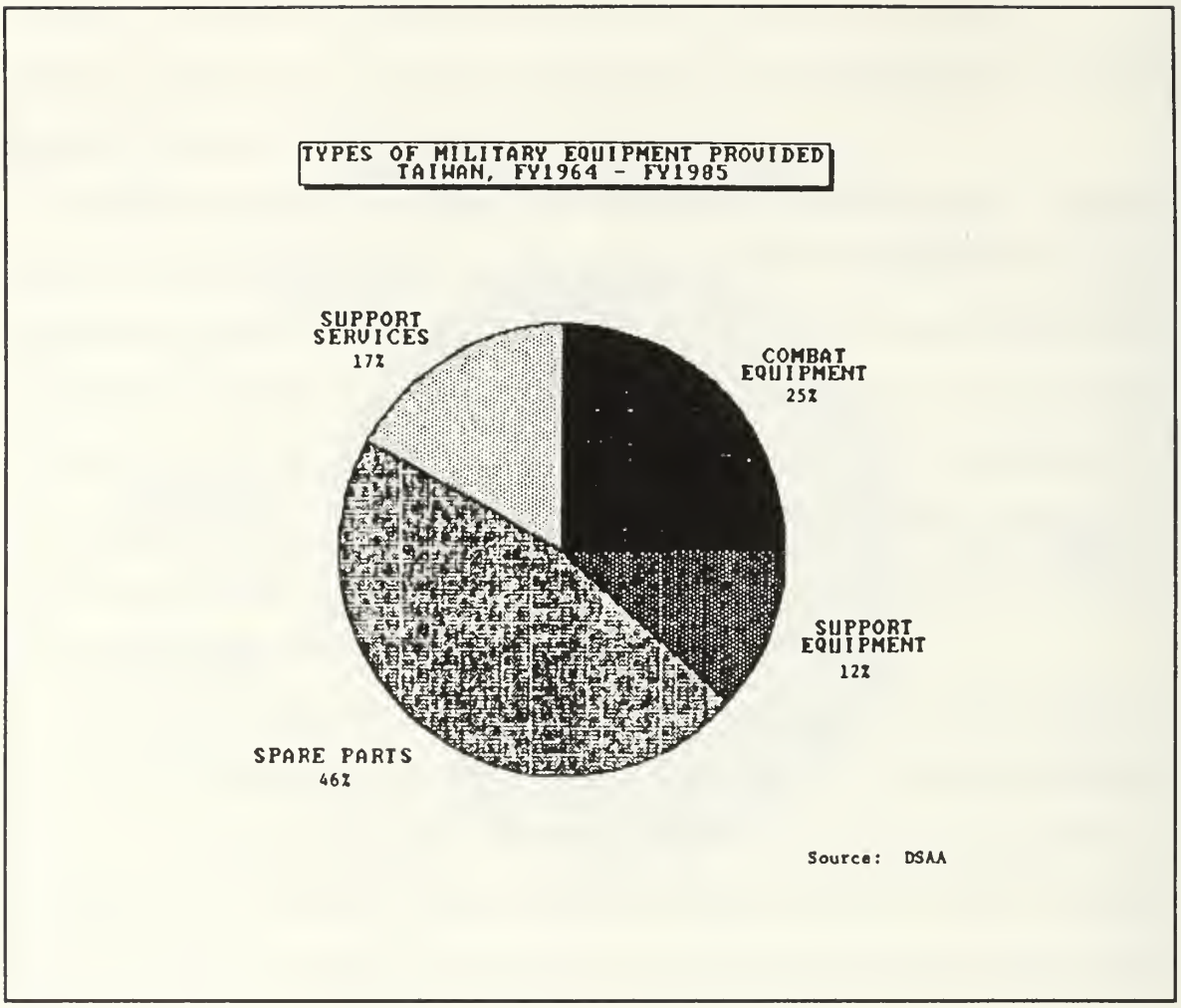

Figure 5-2. Military Equipment Provided Taiwan, FY1964-1985

Figure 5-3 compares United States grant military assistance to total United States military deliveries to Taiwan since 1950. The figure shows that until 1967 military deliveries to Taiwan consisted solely of grant assistance. By 1974 sales had exceeded grants, and by 1979 grant assistance had ended. While military deliveries continued through 1984 at levels consistent with the late 1960s and 1970s, namely around $400 to $600 million a year, these sales did not equal the level of grant assistance given ROC in the 1950s. This trend giving currently the ROC has only

one option which is FMS cash procurement, to obtain its required sophisticated weapon systems.Evidence of America's serious commitment to the security of ROC can only be conveyed by continued military sales of significant defensive weaponry to the Taiwan. Upon ending diplomatic relations with ROC, Congress passed the Taiwan Relations Act of 1979 and stated that the United States "will make available to Taiwan such defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain sufficient self-defense capability."

FMS AND GRANT AGREEMENTS WITH TAIWAN, BY WEAPONS CATEGORY

(1985 DOLLARS IN THOUSANDS)

	WEAPONS, AMMUNITION AND SUPPORT EQUIPMENT													SPARE	SUPPORT	TOTAL
	WEAPONS AND AMMUNITION							SUPPORT EQUIPMENT						PARTS	SERVICES	
FY	CBTAC	CBTSH	CBTVEH	WEAPN	AMMUN	MISSL	TOTAL	SUPAC	SUPSH	SUPVEH	COMMUN	OTHER	TOTAL	TOTAL	TOTAL	
50-63	725695	158059	190076	377590	1721603	184317	3357339	230339	42299	415855	384012	806791	1879296	1860754	1062212	8159600
1964	24271	0	7344	474	14838	891	47814	0	0	2689	16192	29235	48116	69922	78865	244737
1965	25544	0	997	1949	12255	3739	44489	26	0	181	6168	29531	35903	74766	64729	219889
1966	71431	0	0	4036	25922	2008	103396	479	315	7335	11270	30539	49937	117107	46726	317163
1967	65132	7975	377	4371	13504	5771	97134	0	821	11750	9504	50261	72336	109103	56443	335017
1968	93179	11426	0	1014	10107	1977	117702	11061	192	274	11920	15873	39320	69223	110013	336257
1969	0	0	15071	458	17369	170	33071	0	139	23222	5306	21129	49799	53683	53219	191772
1970	5465	2673	4565	252	7464	689	21108	0	0	8268	4811	21524	34606	41482	65025	162225
1971	0	1518	0	2451	8531	0	12499	0	0	24428	14950	23285	62841	75950	40055	191346
1972	0	1517	10949	6998	12602	0	32067	0	257	8721	3933	23408	36319	112881	45991	227260
1973	50574	3230	3441	1364	26812	592	86011	0	60	36165	15294	35153	86671	345531	108038	626248
1974	0	3811	7344	3285	24081	3391	41915	121	888	251	3560	19180	23997	170818	40499	277226
1975	4883	1837	0	1734	18173	36667	63294	947	0	1969	3197	9529	15642	179373	39250	297539
1976	0	0	1118	1178	13598	44006	59900	26	1878	10	6438	15816	24168	444874	109014	637958
1977	479	3754	292	3037	15888	47908	71358	0	0	23	1920	8689	10634	153075	36812	271879
1978	3870	753	145043	2362	61848	62701	276576	114	883	967	14169	21716	37851	222551	78530	615507
1979	0	0	3219	16	24530	228235	256001	0	0	861	8393	7736	16990	423722	151119	847830
1980	0	0	69133	67727	21810	188659	347328	0	306	7489	49	15531	23375	212440	77721	660865
1981	0	686	3274	70	12378	42367	58777	0	0	9853	3481	16530	29863	222810	55271	366719
1982	11917	0	2	6305	18341	4374	40941	0	0	1425	908	9553	11887	416479	77110	546416
1983	21215	1806	115224	12162	6810	226470	383685	0	0	7204	36813	17374	61391	233715	74508	753299
1984	1032	0	0	9900	6725	26621	44277	278923	0	974	2335	7203	289435	334000	67418	735131
1985	0	0	0	5	35	13165	13205	0	0	0	12	41	53	102022	41517	156796

Source: DSAA

Figure 5-3. FMS and Grant Agrmts with Taiwan, FY1950-1980

In fact, arms sales did resume in 1980, but during this period the ROC has suffered what is perhaps the highest turndown rate on Foreign Military Sales requests to the United States of any foreign government. For the author's perception, it seems transparently clear that the United States Government's decisions concerning arms sales to the ROC have not been governed by the defense needs of the Taiwan military, nor are they explicable in terms of the Government's stipulated arms control policies. The Reagan Administration on January 11, 1982 announced its decision to deny the sale of FX aircraft to Taiwan which is an apparent case of this trend. And the decision was determined by changes that had taken place in the international political and strategic environment in which the United States is compelled to operate. [Ref. 19:pp. 135-145]

B. PROCUREMENT PROCESS

Given Taiwan's such special circumstances, with no doubt, its levels of procurement would continue to be cash sales. And such an existing procurement process does not have any significant distinct structure of phases and major decision points, the milestones, such as characterize the United States method.

Procurement begins by identifying needs and their funding. All procurement, large or small, routine or complex, must be initiated by the identification of a current or predictable need. The nature of the need and its relationship to the economy becomes the principal guiding force in the development of the procurement planning. One aspect of the needs-determining process that may cause confusion is the distinction between routine support requirements and special or nonroutine generation of demands.

Procurement action may be facilitated for many types of needs that arise regularly as a result of established programs like inventory replacement, ordinary

operating procedures, maintenance, and repair. On the other hand, needs arise that are unique, unexpected, or a part of major systems development. In these situations, funding problems, strategy selection and source decisions may be complex and may involve substantial management effort, technical expertise and time.

The planning phase, the second step of the procurement process, is principally where procurement strategy is developed. Critical to the strategy decision is the translation of perceived needs into detailed statements that will be incorporated into one or more individual procurement actions.

The next step is solicitation, selection and award of contracts.

The final phase, identified as contract administration, is the time when outcomes are reached and the success of the strategy is discerned. This final segment often has a far greater time frame than the other segments of the process. During the contract administration phase, various management actions occur and most procurement resources are consumed. Also within this phase, many additional procurement actions may be generated, defined and executed. Completion, delivery and acceptance, payment, and warranties also occur during contract administration.

The existence of a defined structure of the ROC procurement system with a clear phases and milestones as shown in Figure 5-4.

C. PROCUREMENT METHODS

One of ROC's major challenges is the loss of world diplomatic recognition and the accompanying closure of defense markets. To counter the loss of previous allies, ROC has developed important relations with some countries in recent years. And has begun buying defense equipment from those countries other than the United

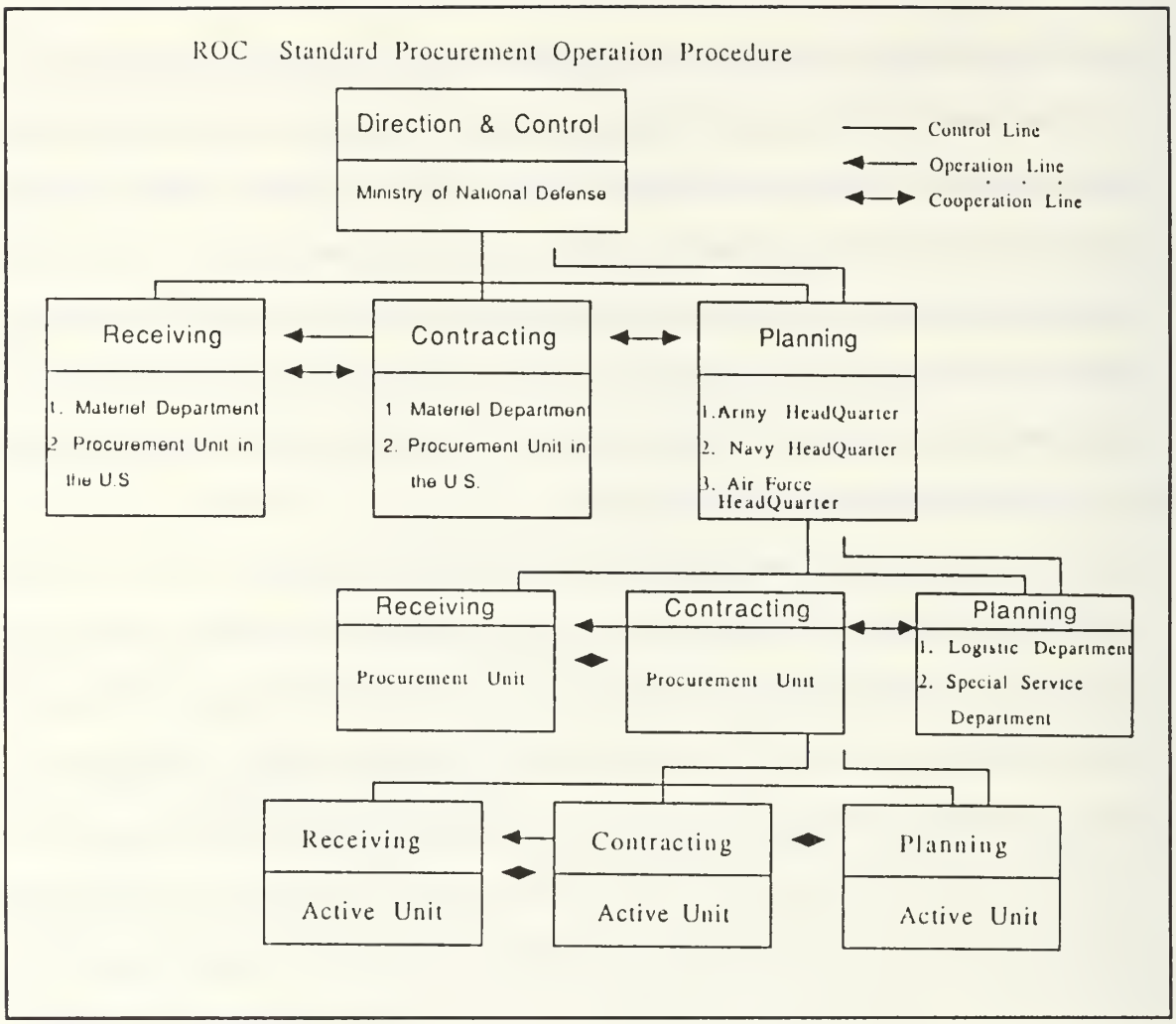

Figure 5-4. ROC Standard Operation Procedure

States, including missiles from Israel, submarines from Netherlands, etc. . But, also fearing a potential end to the U.S. defense equipment supply, efforts at defense self-sufficiency is encouraging its civil defense industries to boost their outputs and capabilities.

Face on these variety resources, the method of procurement is still basis for considering procurement activities. It is derived largely from the procurement statutes. Four methods are recognized that involve distinguishable types of activity.

They are sealed bidding, competitive negotiations, noncompetitive negotiation and small purchases.

Sealed bidding procurement uses a highly structured set of procedures that lead to formal bid openings. The opening is followed by responsiveness and price evaluation techniques entirely different from the techniques and procedures pertinent to the other methods. Any contract agencies shall obtain full and open competition through the use of competitive procedures. One form of competitive procedure is solicitation using sealed bids. The award will be based on price and other price-related factors after considering the solicitation, submission of bids, and evaluation processes necessary to make the award. When using this procedure, the agency should reasonably expect to receive more than one sealed bid in response to its solicitation and should not consider it necessary to conduct discussions with the sources submitting bids.

Competitive negotiation is pertinent for requirements that are less well defined than those for which sealed bidding is applicable. In other words, it is considered appropriate when sealed bids are not pertinent to the requirement. With competitive proposals it is an expectation of the agency that it would hold discussions with each of the offerors, after receipt of their proposals, in the process of arriving at an agreement prior to the award of a contract. However, under the competitive proposal procedure, the agency is required to reserve the right to award its contract without discussions. But such an award should result in the lowest overall cost to the government.

The category of noncompetitive negotiation should be made under following situations:

1. There is only one responsible source is available and no alternative type of source will satisfy the needs.

2. Under unusual and compelling urgency, when the government would be seriously injured unless the agency limited the number of solicited sources.
3. When restriction of an award to a particular source is required because of:
   - The necessity to maintain a particular source to ensure its availability in the event of national emergency.
   - The need to establish or maintain an essential engineering research or development capacity provided by a nonprofit institution.
4. When the item is a brand name commercial item for authorized resale.
5. When national security requires that disclosure of the requirement be limited to the particular sources from which the bid or proposal is solicited.

The final category is small purchase which actions are conducted only when the contract amount does not exceed 20 thousands ROC's dollar. This is distinguished because small purchase actions are not only small in magnitude but highly repetitive in character. Furthermore, most have a short reaction time. [Ref. 20:pp. 245-274]

D. CURRENT PROBLEM

With respect to arms sales, the United States declared:

> The United States Government does not seek to carry out a long-term policy of arms sales to Taiwan that its sales to Taiwan will not exceed, either in qualitative or in quantatitive terms, the level of those supplied in recent years since the establishment of diplomatic relations between the United States and China, and that it intends to reduce gradually its sale of arms to Taiwan, leading over a period of time to a final resolution .

There are two points in the above quotation that are key factors to effect the United States foreign military sale to ROC.

1. First: The United States "will not exceed the level" of arms "supplied in recent years " As a matter of fact, the Reagan Administration has tied quantity to the dollar amounts adjusted for inflation, also on January 11, 1982 announced its decision to deny the ROC's request for more advanced F-16 or F-18 aircraft which clearly declared its tied quality policy.
2. Second: The United States will "reduce gradually"the sales of arms" leading over a period of time to a final resolution ." Just because the second key words here are gradually (moving by degrees, little by little ?) and resolution (not final termination, but final negotiated level ?) , the wording allows for a

great deal of flexibility and interpretation. It goes almost without saying that nobody can predict the next Administration will give every evidence, that any arms requests tendered by the ROC will receive the same treatment in the future, that they have in the past.

Given such ambiguous procurement environment to ROC, it seems quite clear why:

1. The ROC still suffered the highly turndown rate on FMS requests to the United States.
2. It takes a long time to receive FMS materials when compared to procurement from direct commercial sales from U.S. companies.

VI. CONCLUSION AND RECOMMENDATION

A. CONCLUSION

Should the United States decline to make sales of major military equipment on a regular basis, ROC's defensive capabilities will deteriorate, the Taiwan Strait region will be jeopardized, America's credibility as a defense partner will be impaired, and the intentions of the Taiwan Relations Act would have been violated. Given the present disposition of the FMS policy makers in the U.S. side and the determination of the authorities in PRC side to obstruct such arms sales, it appears unlikely that the defense needs of the ROC will be met. If so, the damage done to the defense capabilities of Taiwan may well become irreparable in a very short time. It is my conclusion, bearing in mind this critical conditions, the Foreign Military Sales Program can be said to teach many valuable lessons for recognition and development mutual relationships in the United States and Republic of China.

B. RECOMMENDATION

It is recommended that, with respect to ROC on Taiwan, the United States strategic objective should be to continue to assure a military strong Taiwan. To this end, U.S. should provide the maximum amount of military support allowable under the stated intent of the Taiwan Relations Act.

It is recommended that, under current environment, the Republic of China should not only insure a certain level of military balance, but also enhance the overall efficiency in acquisition of weapon system. And the efficiency in acquisition can be obtained in several ways: institutional betterment, and strategic and

operational improvements. Of course, if an all-round and simultaneous approach to efficiency is tried, the result should be optimized.

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